

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JOSEPH DOMENICK BUSTOS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2485

November 16, 2022

Appeal from the Circuit Court for Polk County; Donald G. Jacobsen,
Judge.

Howard L. Dimmig, II, Public Defender, and Caroline Joan S. Picart,
Assistant Public Defender, Bartow, for Appellant.

ATKINSON, Judge.

Joseph Domenick Bustos appeals from the judgment and
sentence for child abuse entered following a negotiated plea
agreement. His sentence provides for investigative costs of \$385.85.

But at the hearing, the court indicated that it was imposing "\$382.85 investigative costs to the Polk County Sheriff's Office."

During the pendency of this appeal, Bustos filed a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), which the trial court denied, and we reverse as to one of the two items in the monetary obligations order that Bustos challenged—the \$3 discrepancy between the amount set forth in the affidavit and the amount in the judgment as it relates to the investigation costs. Pursuant to section 938.27(1), Florida Statutes (2019), "convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies." The plea form in the record indicates that Bustos agreed to pay only established investigative costs in the amount of \$382.85, an amount reflected by the affidavit submitted by the State in response to Bustos' motion to correct sentencing error. Because the award of \$385.85 did not conform to the trial court's oral ruling of "\$382.85 investigative costs to the Polk County Sheriff's Office," the sentence is illegal. *See Williams v. State*, 957 So. 2d 600, 603 (Fla. 2007) ("[W]e have determined that a written

sentence that conflicts with the oral pronouncement of sentence imposed in open court is an illegal sentence.").

Accordingly, we remand for entry of a corrected judgment and sentence consistent with this opinion. However, we affirm Bustos's conviction and sentence in all other respects.

Affirmed in part, reversed in part, and remanded with directions.

SLEET and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.