

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

MICHAEL CRAIG BOWERS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2597

November 18, 2022

Appeal from the County Court for Polk County; Robert E. Griffin,
Judge.

Howard L. Dimmig, II, Public Defender, and Megan Olson,
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Jonathan S.
Tannen, Assistant Attorney General, Tampa, for Appellee.

ATKINSON, Judge.

Michael Craig Bowers appeals his conviction and sentence for
one count of offer of prostitution, lewdness, or assignation in
violation of section 796.07(2)(e), Florida Statutes (2021). We affirm

his conviction without further discussion. Bowers also argues that the trial court erred by imposing a \$5,000 civil penalty pursuant to section 796.07(6). The State concedes this error. We agree with Bowers and accept the State's concession. Therefore, we reverse Bowers' sentence and remand for the trial court to strike the civil penalty.

In relevant part, Florida Rule of Criminal Procedure 3.800(b)(2) provides, "If an appeal is pending, a defendant or the state may file in the trial court a motion to correct a sentencing error." "[I]f the trial court does not file an order ruling on the motion within 60 days, the motion shall be deemed denied." Fla. R. Crim. P. 3.800(b)(2)(B). "Once the sixty days has passed with no action on the motion, the trial court's jurisdiction ends." *Cammalleri v. State*, 270 So. 3d 369, 371 (Fla. 4th DCA 2019) (quoting *Wilson v. State*, 846 So. 2d 1201, 1203 (Fla. 4th DCA 2003)).

Bowers filed his motion to correct sentencing error on November 17, 2021. The trial court purported to grant the motion and correct the sentencing error on January 24, 2022—over sixty days from the date Bowers filed his motion. Therefore, the trial court did not have jurisdiction to grant Bowers' motion, and the

motion was deemed denied. *See Cammalleri*, 270 So. 3d at 371; *see also* Fla. R. Crim. P. 3.800(b)(2)(B).

Bowers was charged with second-degree misdemeanor offer of prostitution, lewdness, or assignation in violation of section 796.07(2)(e). A first-time violation of section 796.07(2)(e) is "[a] misdemeanor of the second degree . . . punishable as provided in s. 775.082 or s. 775.083[, Florida Statutes (2020)]." § 796.07(4)(a)1. Sections 775.082¹ and 775.083² do not provide that a second-degree misdemeanor is punishable by a civil penalty of any amount.

In relevant part, section 796.07(6) provides, "[a] person who violates *paragraph (2)(f)* shall be assessed a civil penalty of \$5,000 if the violation results in any judicial disposition other than acquittal or dismissal." (Emphasis added.) However, Bowers was not

¹ In relevant part, section 775.082 provides, "For a misdemeanor of the second degree, [a person may be sentenced to and punished] by a definite term of imprisonment not exceeding 60 days." § 775.082(4)(b).

² In relevant part, section 775.083 provides, "Fines for designated crimes . . . shall not exceed: . . . (e) \$500, when the conviction is of a misdemeanor of the second degree [or] (g) [a]ny higher amount specifically authorized by statute." § 775.083(1)(e), (g).

charged with violating section 796.07(2)(f).³ Because Bowers was not charged with violating section 796.07(2)(f) and the relevant statutes do not provide for assessment of a \$5,000 civil penalty for violation of section 796.07(2)(e), the trial court erred by imposing a \$5,000 civil penalty in its first corrected costs order.

Affirmed in part; reversed in part; remanded.

STARGEL and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.

³ Section 796.07(2)(f) provides that "[i]t is unlawful: . . . (f) [t]o solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation."