

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ANTHONY SMITH,)	
)	
Appellant,)	
)	
v.)	Case No. 2D02-3556
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
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Opinion filed November 7, 2003.

Appeal from the Circuit Court for Pinellas
County; Richard A. Luce, Judge.

James Marion Moorman, Public Defender,
and John C. Fisher, Assistant Public
Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Robert J. Krauss,
Chief Assistant Attorney General,
Tampa, for Appellee.

PER CURIAM.

In this Anders¹ appeal, counsel for Anthony Smith contends that remand is required to correct several sentencing errors related to Smith's guilty plea to three counts of robbery in circuit court case number CRC01-03019CFANO. Of the three

¹ See Anders v. California, 386 U.S. 738 (1967); In re Appellate Court Response to Anders Briefs, 581 So. 2d 149 (Fla. 1991).

points Smith raised in a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2),² we agree with only one: the written sentencing order should be corrected to conform to the trial court's oral pronouncement. Otherwise, the convictions and sentences are affirmed.

At a sentencing hearing before Judge Luce, Smith pleaded guilty to three counts of robbery in case number CRC01-03019CFANO, one count of robbery in case number CRC01-06072CFANO, and one count of robbery in case number CRC01-06073CFANO. The information in CRC01-03019CFANO had alleged a total of eight counts arising from criminal acts that included robbery at gunpoint. Prior to the sentencing hearing before Judge Luce, Smith was tried and convicted on counts one and eight, for which he received thirty-year sentences to be served concurrently. Also prior to the sentencing hearing, Smith was separately tried and convicted on count five, for which he received a life sentence to be served concurrently with the sentence for count one. Count seven is not at issue in this appeal.

At the sentencing hearing, count six in CRC01-03019CFANO was disposed of when Smith pleaded guilty to petit theft and was sentenced to time served. Five counts of robbery remained: counts two, three, and four in CRC01-03019CFANO; the single count in CRC01-06072CFANO; and the single count in CRC01-06073CFANO. Judge Luce proposed to sentence Smith to ten years for each count of robbery to be served consecutively for a total of fifty years. This fifty-year sentence, in

² It appears from the record that the trial court did not rule on the motion within sixty days. Accordingly, we treat the motion as denied. See O'Neill v. State, 841 So. 2d 629, 629 (Fla. 2d DCA 2003); Jackson v. State, 793 So. 2d 117, 118 (Fla. 2d DCA 2001).

turn, would run concurrently with the sentences imposed after Smith's two previous trials. Smith agreed to this sentence and entered his plea.

The written sentencing order correctly reflects the imposition of a ten-year sentence for each of counts two, three, and four for robbery, and it correctly reflects that the sentence imposed for count four shall run consecutively to the sentence imposed for count three and the sentence imposed for count three shall run consecutively to the sentence imposed for count two. However, it states that the sentence imposed for count two "shall run consecutive with the sentence set forth in count 1." Judge Luce intended the five consecutive sentences for the five robbery counts before him to run concurrently with the sentences imposed after Smith's previous trials, including the thirty-year sentence imposed for count one. Therefore, consistent with the trial court's oral pronouncement, the written sentencing order should be corrected to reflect that the sentence imposed for count two shall run concurrently with the sentence imposed for count one. See Tatum v. State, 805 So. 2d 949, 949 (Fla. 2d DCA 2001). Smith need not be present for this correction of sentence. See Windisch v. State, 709 So. 2d 606, 607 (Fla. 2d DCA 1998).

Convictions affirmed; remanded to correct written sentencing order.

FULMER and WALLACE, JJ., and DANAHY, PAUL W., SENIOR JUDGE, Concur.