

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

HARRY PENNEY, a/k/a)
HARRY E. PENNEY, III,)
)
Appellant,)
)
v.)
)
STATE OF FLORIDA,)
)
Appellee.)
_____)

Case No. 2D05-1885

Opinion filed December 30, 2005.

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

James Marion Moorman, Public
Defender, and Charles D. Peters,
Special Assistant Public Defender,
Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Tiffany Gatesh
Fearing, Assistant Attorney General,
Tampa, for Appellee.

ALTENBERND, Judge.

Harry Penney, a/k/a Harry E. Penney, III, appeals his judgments and
sentences for attempted first-degree murder, aggravated battery, four counts of

aggravated assault, and one count of resisting an officer with violence. We affirm Mr. Penney's convictions and sentences but write to address a sentencing error raised by Mr. Penney.

Mr. Penney was sentenced to thirty years' imprisonment on count one for attempted first-degree murder; ten years' imprisonment on count two for the aggravated battery; three years' imprisonment for each of the aggravated assaults in counts three, four, five, and six; and five years' imprisonment for resisting an officer with violence in count seven.

The trial court's oral pronouncement of Mr. Penney's sentences ordered that his sentences for counts two through six run concurrently with each other, but consecutively to count one. However, Mr. Penney's written sentence for count three erroneously states that it is to run "concurrently" with the sentence in count one as opposed to "consecutively."

Although the written sentence for count three differs from the oral pronouncement, any error is harmless because it does not affect the amount of time Mr. Penney will spend in prison. Because count two must run consecutively to count one, Mr. Penney will spend the same time in prison regardless of whether the three-year sentences are served concurrently with the thirty-year or the ten-year sentence.

Affirmed.

SILBERMAN and KELLY, JJ., Concur.