

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DEXTER D. GRABLE,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D09-163

Opinion filed July 2, 2010.

Appeal from the Circuit Court for
Sarasota County; Charles E. Roberts,
Judge.

James Marion Moorman, Public
Defender, and Richard J. Sanders,
Assistant Public Defender, Bartow,
for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Tonja Rene Vickers,
Assistant Attorney General, Tampa,
for Appellee.

CRENSHAW, Judge.

Dexter D. Grable appeals his concurrent twenty-year minimum mandatory sentences for attempted second-degree murder and shooting into a building. We reverse and remand for resentencing because the offense of shooting into a building is

a second-degree felony punishable by a term of imprisonment not exceeding fifteen years, and it is not an offense for which the minimum mandatory sentence can be imposed.

Grable pleaded no contest to attempted second-degree murder and shooting into a building, and he was sentenced to a concurrent twenty years' imprisonment with the minimum mandatory sentence imposed on each count pursuant to section 775.087, Florida Statutes (2007). Grable filed a Florida Rule of Criminal Procedure 3.800(b)(2) motion to correct sentencing error arguing that his sentence for shooting into a building was illegal because that offense, under section 790.19, Florida Statutes (2007), is not a listed offense for which the minimum mandatory sentence can be imposed under section 775.087(2)(a)(1). Although the trial court eventually granted the motion and amended Grable's sentence, it did so beyond the sixty-day time period set forth in rule 3.800(b)(2)(B). Therefore, Grable's motion is deemed denied and the amended sentence is a nullity. See Fla. R. Crim. P. 3.800(b)(2)(B); Pearce v. State, 968 So. 2d 92, 94 (Fla. 2d DCA 2007); Jackson v. State, 793 So. 2d 117, 118 (Fla. 2d DCA 2001).

The trial court recognized and the State properly concedes that Grable's sentence for shooting into a building is illegal. The minimum mandatory sentence provision in section 775.087(2)(a)(1) does not apply to a conviction under section 790.19. See Bradford v. State, 722 So. 2d 858, 860 (Fla. 1st DCA 1998); Samuels v. State, 681 So. 2d 915, 915-16 (Fla. 4th DCA 1996); see also Simmons v. State, 457 So. 2d 534, 535 (Fla. 2d DCA 1984). We also note that the sentence of twenty years' imprisonment for shooting into a building is illegal because the offense is a second-

degree felony punishable by a term of imprisonment not exceeding fifteen years. See §§ 790.19, 775.082(3)(c). Accordingly, we reverse Grable's sentence and remand for the imposition of a corrected sentence consistent with this opinion.¹

Reversed and remanded for resentencing.

WHATLEY and SILBERMAN, JJ., Concur.

¹We note that Grable need not be present for the entry of the corrected sentence. See Windisch v. State, 709 So. 2d 606, 607 (Fla. 2d DCA 1998).