

Third District Court of Appeal

State of Florida

Opinion filed October 14, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-83
Lower Tribunal No. 17-17890

Gregory Bailey,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Lisa Walsh,
Judge.

Carlos J. Martinez, Public Defender, and Deborah Prager, Assistant Public
Defender, for appellant.

Ashley Moody, Attorney General, and Kseniya Smychkouskaya, Assistant
Attorney General, for appellee.

Before EMAS, C.J., and SCALES and HENDON, JJ.

HENDON, J.

Gregory Bailey appeals his conviction and sentence for misdemeanor assault.

We affirm, but remand for correction of scrivener's errors in the judgment.

The jury found Bailey guilty of assault, a misdemeanor,¹ as a lesser included offense of aggravated assault with a deadly weapon. In its oral pronouncements, the trial court withheld adjudication and placed Bailey on reporting probation for six months. The written judgment, however, incorrectly provides that Bailey pled guilty to assault, a felony of the third degree, citing to section 784.021(1)(a), and that the trial court adjudicated him guilty. Accordingly, as the State properly concedes, this cause must be remanded for the purpose of correcting the scrivener's errors so that the judgment correctly reflects the jury's verdict and the trial court's oral pronouncements. See Malone v. State, 235 So. 3d 335 (Fla. 3d DCA 2017); Ismer v. State, 253 So. 3d 769 (Fla. 2d DCA 2018). Bailey need not be present for the correction of the scrivener's errors. See Ismer.

The remaining arguments raised by Bailey do not merit discussion.

Affirmed, with instructions.

¹ See § 784.011, Fla. Stat. (2017).