

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.:16-2010-CF-238-AXXX-MA

DIVISION: CR-E

STATE OF FLORIDA,

v.

JAY MORGAN SOWERS,
Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION TO CORRECT SENTENCING ERROR**

This cause came to be heard before this Court upon the Defendant's Motion to Correct Sentencing Error, filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) on September 23, 2011.

On October 6, 2010, the Defendant pled guilty to Home Invasion Robbery (with actual possession of a firearm) and no contest to Aggravated Battery with a Deadly Weapon (Count Two). On April 19, 2011, the Defendant was sentenced to twenty years incarceration with a ten year mandatory minimum as to Count One, and ten years incarceration as to Count Two, both sentences to run concurrently. (Exhibit "A.")

In the instant Motion, the Defendant makes seven claims for relief. In his first ground for relief, the Defendant alleges that the Court erred in determining that he was not eligible for Youthful Offender sanctions because he was pleading guilty to a life felony. The Defendant correctly points out that Home Invasion Robbery is a first degree felony punishable by life, not a life felony. §812.135, Fla Stat. (2010); §775.082(3)(a)(b), Fla. Stat. (2010). As such, the Court had the

discretion to sentence the Defendant as a Youthful Offender. §958.04(1)9(a)-(c), Fla. Stat. (2010). The Court will resentence the Defendant.

Because of their similarities, the Defendant's second and third grounds for relief will be considered together. In his second and third claim for relief, the Defendant alleges that the Court erred in determining that he was subject to the 10-20-Life sentencing enhancement and imposing a mandatory minimum ten year sentence as to Count One. In his third claim for relief, the Defendant states that the Court erred in finding that a firearm was possessed by him as to either count. He points to the Amended Information filed on February 2, 2010. (Exhibit "B.") At that time, Count Two was amended to state that the deadly weapon possessed by the Defendant during the aggravated battery was a knife, not a firearm. Count One was not amended. The Defendant also provides an excerpt of the victim's testimony at the trial of co-defendants Joshua Martin and Bernard Johnson.¹ In an interest of fairness and under the Rule of Completeness, section 901.08, Florida Statutes, this Court provides the remainder of the victim's trial testimony, which states that the Defendant, at some point during the episode, held and pointed the co-defendant's gun at her. (Exhibit "C," pages 471-72.) This is a clear example of actual possession, and to omit the entire testimony of the victim in this case would be misleading and confusing. Mendoza v. State, 700 So. 2d 670 (Fla. 1997); Pulcini v. State, 41 So. 3d 338 (Fla. 4th DCA 2010). The Court will also address this at the Defendant's resentencing.

Claims four through six will be addressed at resentencing.² They are rendered moot by

¹ J. Martin, case number 16-2010-CF-000041; B. Johnson, case number 16-2010-CF-000238.

² Claim Four alleges that the PDI and PSI contain material errors of fact (i.e. that the Defendant actually possessed a gun). Claim Five avers that the Court erred in determining that Count 2 referred to a firearm, since Count 2 had been amended to delete reference to firearm. Claim Six asserts that the Court erred in advising the Defendant that he faced life in prison for his conviction under Count 1, when life imprisonment was not an available sentencing option under Graham v. Florida, 130 S. Ct. 2011 (2010).

resentencing proceedings.

In his seventh claim for relief, the Defendant alleges that the Court erred in creating a Restitution Order which failed to expressly provide that restitution was joint and several with the co-defendants. Upon close review, it is evident that all three co-defendants were ordered to make the same restitution, and the Restitution Orders hold each co-defendant liable for the total amount, less any money paid by other co-defendants. (Exhibits "D"- "F.") Oral pronouncement of restitution for all three co-defendants indicated that the restitution was to be joint and several. This issue will be addressed at resentencing.

Based on the above, it is:

ORDERED AND ADJUDGED that Defendant's Motion to Correct Sentencing Error is **GRANTED**.

DONE AND ORDERED in Chambers, at Jacksonville, Duval County, Florida, on this 2 day of November, 2011.



CIRCUIT COURT JUDGE

Copies to:
Office of the Attorney General
The Capitol
PI-1
Tallahassee, Florida 32399-1050

Mr. Vincent Sonson, Esquire
Mr. Cyrus p. Zomorodian, Esquire
Assistant State Attorney
220 East Bay Street
Jacksonville, Florida 32202-3429

Mr. Malcolm Anthony, Esquire
572 Ponte Vedra Blvd.
Suite 1
Ponte Vedra Beach, Florida 32082

William Mallory Kent, Esquire
Attorney for the Defendant
1932 Perry Place
Jacksonville, Florida 32207-3443

Jay Morgan Sowers
D.O.C. # J42905
Mayo Correctional Institution
8784 US Highway 27 West
Mayo, Florida 32006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Defendant by United States Mail

this _____ day of _____, 2011.

Deputy Clerk

Case No.: 16-2010-CF-238-AXXX-MA
Attachments: Exhibits A - F
/kkm