

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

CASE NO.: **16-2010-CF-10719-AXXX**
DIVISION: CR-G

STATE OF FLORIDA

v.

KEITH DEONTAY LOVE,
Defendant.

ORDER GRANTING MOTION TO CORRECT ILLEGAL SENTENCE

Defendant has filed a Motion to Correct Illegal Sentence in Case No.: 2010-cf-10719. Having reviewed the motion, relevant statutes, and pertinent documents in the Clerk's file and been advised by counsel for both the Defendant and the State that they are in agreement that certain aspects of the original sentences in this case are illegal, the court GRANTS the Defendant's motion and directs the Clerk of the Court to file an Amended Judgment and Sentence in accordance with this order.

The Defendant pled guilty to the following charges: Count I – Kidnapping with a Firearm in violation of §787.01(1), Fla. Stat.; Count II – Attempted Sexual Battery in violation of §794.011(3), Fla. Stat., and §777.04(1), Fla. Stat. In each count, the State alleged that the Defendant had actual possession of a firearm in violation of §775.087(2)(a), Fla. Stat., during the commission of the crime. The court sentenced the Defendant in Count I and Count II to concurrent split sentences of 50 years in Florida State Prison, with a portion served as a 25 year minimum mandatory sentence under §775.087(2), followed by probation for the remainder of the Defendant's life. The sentences in both counts are illegal for different reasons.

The charge in Count I of Kidnapping with a Firearm is a felony of the first degree punishable by a term of years not exceeding life. §787.01(2), Fla. Stat. The 50 year sentence, followed by probation for the remainder of the Defendant's life, is therefore legal. However, the 25 year minimum mandatory sentence under §775.087(2)(a), Fla. Stat., for actual possession of a firearm during the commission of the crime is not. That statute only provides for a 10 year minimum mandatory sentence for actual firearm possession. At the time of sentencing, the court was mistakenly under the impression that the 25 year minimum mandatory sentence under §794.0115(2), Fla. Stat., applied. This is the "Dangerous Sexual Felony Offender" statute and a charge of Kidnapping under §787.01(2) is not a predicate offense for its application. Count I should include a 10 year minimum mandatory sentence rather than the 25 year minimum mandatory sentence indicated in the original Final Judgment and Sentence.

As to Count II, Attempted Sexual Battery under §777.04(1) is normally a second degree felony that is punishable up to 15 years in prison. Like Count I, the court mistakenly believed that the Defendant's sentence for this charge was also enhanced to a mandatory minimum of 25 years to life under the dangerous sexual felony offender. While various charges for Sexual Battery under §794.011, Fla. Stat., are predicate offenses for dangerous sexual felony offender status, Attempted Sexual Battery under §777.04(1) is not included in that statute for enhancement. Instead, §775.087(1)(b), Fla. Stat. (enhancement for carrying, using or displaying a firearm in the commission of a felony) reclassifies the Defendant's charge from a second degree felony to a first degree felony with a maximum 30 year sentence. Additionally, the 25 year minimum mandatory sentence in Count II under §775.087(2)(a) for actual possession of a firearm is illegal. As explained above, this statutory provision only requires a 10 year minimum mandatory sentence. The sentence in Count II, therefore, should be reduced to 30 years in

Florida State Prison, with an initial 10 year minimum mandatory sentence in accordance with §775.087(2)(a). No portion of the sentence should be split with a period of probation.

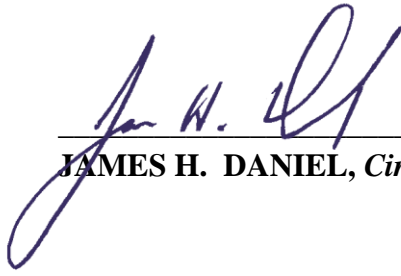
Based on the foregoing, the Clerk of the Court is ordered to enter an Amended Final Judgment and Sentence with the following corrections:

1. For Count I, the Defendant shall serve a split sentence of 50 years in Florida State Prison, with only a 10 year minimum mandatory sentence for actual possession of a firearm under §775.087(2)(a), followed by probation for the remainder of his life;

2. For Count II, the Defendant shall serve 30 years in Florida State Prison with only a 10 year minimum mandatory sentence for actual possession of a firearm under §775.087(2)(a). The sentence shall not be a split sentence with a term of probation;

3. These amended sentences shall run concurrent with each other and the sentences imposed in Case No.: 2010-cf-11423 and Case No.: 2010-cf-12655. All other aspects of the original Final Judgment and Sentence shall remain the same.

DONE AND ORDERED in Chambers, in Jacksonville, Duval County, Florida, on this 25th day of August, 2017.



JAMES H. DANIEL, Circuit Judge

Copies to:
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