

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JULY TERM 2010

PHILLIP KIRK JOHNSON, JR.,

Appellant,

v.

CASE NO. 5D10-1780

STATE OF FLORIDA,

Appellee.

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Opinion filed September 17, 2010

3.800 Appeal from the Circuit Court  
for Lake County,  
Mark J. Hill, Judge.

Phillip Kirk Johnson, Jr., Bushnell, pro se.

Bill McCollum, Attorney General,  
Tallahassee, and Allison Leigh Morris,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

ON CONCESSION OF ERROR

LAWSON, J.,

Phillip Kirk Johnson, Jr., appeals the denial of his motion to correct illegal sentence,<sup>1</sup> claiming that the thirty-year prison releasee reoffender<sup>2</sup> sentence imposed

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<sup>1</sup> See Fla. R. Crim. P. 3.800(a).

<sup>2</sup> See § 775.082(9), Fla. Stat. (2008).

on his 2008 conviction for attempted robbery with a firearm exceeds the maximum penalty allowed by law on that charge. The State properly concedes error.

Robbery with a firearm is a first-degree felony, punishable by life. See § 812.13(1),(2)(a), Fla. Stat. (2008). An attempt to commit the crime is reclassified as a second-degree felony, which carries a maximum penalty of fifteen years in state prison. See § 777.04(4)(c), Fla. Stat. (2008) and § 775.082(3)(c), Fla. Stat. (2008); see also *Johnson v. State*, 17 So. 3d 1290, 1291 (Fla. 2d DCA 2009) ("Robbery with a firearm is a first-degree felony, and the attempt to commit a first-degree felony is a second-degree felony."). Because of Johnson's designation as a prison releasee reoffender, the trial court must impose the maximum penalty of fifteen years. See § 775.082(9)(a)3.c., Fla. Stat. (2008).

Additionally, the information in this case alleged that Johnson actually possessed the firearm during commission of the crime for purposes of section 775.087(2)(a), Florida Statutes (2008), which requires imposition of a ten-year minimum mandatory sentence. Because the jury found that Johnson actually possessed a firearm while committing this offense, the ten-year mandatory minimum sentence must also be imposed. *Id.*; *McDonald v. State*, 957 So. 2d 605, 610-12 (Fla. 2007).

Accordingly, we reverse the order denying Johnson's motion and remand with instructions that Johnson be resentenced in accordance with this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

MONACO, C.J., and SAWAYA, J., concur.