

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

JANUARY TERM 2011

EUGENIO SPITALIERI,

Appellant,

v.

Case No. 5D10-232

STATE OF FLORIDA,

Appellee.

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Opinion filed July 8, 2011

Appeal from the Circuit Court  
for Lake County,  
G. Richard Singeltary, Judge.

Terrence E. Kehoe, of Law Offices of  
Terrence E. Kehoe, Orlando, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Kristen L. Davenport,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

We affirm Eugenio Spitalieri's convictions of two counts of manslaughter with a firearm and the consecutive fifteen-year sentences imposed as a consequence. See Contreras-Mayahua v. State, 40 So. 3d 861 (Fla. 4th DCA 2010).

We accept the State's concession of error regarding Spitalieri's motion to correct his sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(b). The State

concedes that Spitalieri is entitled to 586 days of credit for time served instead of the 583 days that the court awarded. The State further concedes that the \$1 First Step and \$30 drug testing costs must be stricken as they are discretionary costs and were not orally pronounced. See State v. Williams, 712 So. 2d 762 (Fla. 1998). For the same reason, the \$250 fine imposed under section 775.083(1), Florida Statutes (2010), shall be stricken. See Dadds v. State, 946 So. 2d 1129 (Fla. 2d DCA 2006).<sup>1</sup> On remand, Spitalieri's sentencing documents shall be corrected. No resentencing is necessary.

Convictions AFFIRMED; REMANDED for Correction of Sentence.

ORFINGER, C.J., GRIFFIN and COHEN, JJ., concur.

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<sup>1</sup> Had the State not agreed both below and on appeal to strike the costs and fines not orally pronounced at sentencing, the outcome may have been different. See Velez-Pizzini v. State, 58 So. 3d 278 (Fla. 5th DCA 2011); Grubb v. State, 922 So. 2d 1002 (Fla. 5th DCA 2006).