

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

JULY TERM 2010

SAMUEL WOODEN,

Appellant,

v.

Case No. 5D10-986

STATE OF FLORIDA,

Appellee.

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Opinion filed July 23, 2010

3.800 Appeal from the Circuit Court  
for Marion County,  
Brian D. Lambert, Judge.

Samuel Q. Wooden, Carrabella, pro se.

Bill McCollum, Attorney General,  
Tallahassee, and Kellie A. Nielan,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

EVANDER, J.

Samuel Wooden appeals an order denying his motion to correct sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Wooden was convicted of attempted second degree murder with a firearm. The jury also found by special verdict that Wooden discharged a firearm during the commission of the crime and, as a result of the discharge, great bodily harm was inflicted on the victim. He was sentenced to fifty years imprisonment with a minimum mandatory term of twenty-five years. On

appeal, he contends that the fifty year sentence exceeds the statutory penalty. We agree.

Attempted second degree murder is a second degree felony. See §§ 782.04(2), 777.04(4)(c), Fla. Stat. (2006). If the offense is committed with a firearm, the crime is reclassified to a first degree felony pursuant to section 775.087(1)(b), subject to a sentence not to exceed thirty years. See § 775.082(3)(b), Fla. Stat. (2006).

Because the jury found that Wooden's discharge of a firearm resulted in great bodily harm, the minimum mandatory range under section 775.087(2)(a)(3) was twenty-five years to life imprisonment. However, once the trial court imposed the minimum mandatory sentence of twenty-five years, it could not exceed the thirty year maximum penalty for a first degree felony under section 775.082(3)(b). *Brown v. State*, 983 So. 2d 706 (Fla. 5th DCA 2008). The twenty-five year to life minimum mandatory range under section 775.087(2)(a)(3) does not create a new statutory maximum penalty of life imprisonment. See *Brown*; *Yasin v. State*, 896 So. 2d 875 (Fla. 5th DCA 2005).<sup>1</sup>

On remand, the trial court is directed to correct Wooden's sentence. Wooden does not need to be present for such proceeding.

REVERSED and REMANDED.

ORFINGER and TORPY JJ., concur.

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<sup>1</sup> Contrary to the State's argument, our decision in *Mendenhall v. State*, 999 So. 2d 665 (Fla. 5th DCA 2008), *rev. granted*, 26 So. 3d 582 (Fla. 2009) does not suggest a different result. In *Mendenhall*, we approved the imposition of a thirty-five year sentence on a first degree felony where the trial court also imposed a thirty-five year minimum mandatory sentence pursuant to section 775.087(2)(a)(3).