

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

TIMOTHY R. REDMOND,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2024-0560

May 30, 2025

Appeal from the County Court for Pinellas County; Dorothy Vaccaro,
Judge.

Blair Allen, Public Defender, and Kevin Briggs, Assistant Public
Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Allison C. Heim,
Assistant Attorney General, Tampa, for Appellee.

MORRIS, Judge.

Timothy R. Redmond appeals his judgment and sentence for driving under the influence. We affirm the judgment without further discussion. However, because the trial court erred by solely imposing a jail sentence and failing to place Redmond on monthly reporting probation and by failing to require him to complete a substance abuse

course, as set forth in section 316.193(5), Florida Statutes (2022), we reverse his sentence.¹

The State properly concedes error. Section 316.193(5) provides in relevant part that a "court *shall* place all offenders convicted of violating this section on monthly reporting probation and *shall* require completion of a substance abuse course conducted by a DUI program licensed by the [Department of Highway Safety and Motor Vehicles]." (Emphasis added.) As we explained in *Archer v. State*, 332 So. 3d 24, 25 (Fla. 2d DCA 2021), "[s]ection 316.193(5) is unambiguous." The use of the word "shall" reflects the mandatory nature of that provision. See *Sanders v. City of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008). Thus we reverse Redmond's sentence and remand for the trial court to conduct a de novo resentencing with instructions to include a probation period of sufficient length to allow Redmond to complete his substance abuse course

¹ Redmond raised this issue in a motion to modify sentence brought pursuant to Florida Rule of Criminal Procedure 3.800(c). We have jurisdiction because Redmond filed a timely notice of appeal of his judgment and sentence after the trial court denied his motion, and this court has jurisdiction over direct appeals of judgments and sentences. See *Jackson v. State*, 144 So. 3d 658, 659 n.1 (Fla. 2d DCA 2014). Though the State argues that Redmond should have petitioned for certiorari review of the order denying his motion to modify sentence, rather than seeking relief through a direct appeal, the cases relied upon by the State are inapposite because they involved appeals solely of orders denying rule 3.800(c) motions rather than direct appeals from judgments and sentences which were initiated after the denial of such motions. Our review of other case law addressing this point reflects that orders denying rule 3.800(c) motions are not separately appealable. But because this appeal is a direct appeal from a judgment and sentence rather than a separate appeal from an order denying a rule 3.800(c) motion, we conclude that the jurisdictional statement in *Jackson* is applicable here. Under either jurisdictional basis, Redmond is entitled to relief as conceded by the State.

requirement as set forth in section 316.193(5). *See Archer*, 332 So. 3d at 26.

Judgment affirmed; sentence reversed and remanded with instructions.

SMITH, J., Concur.

ATKINSON, J., Concur in result with opinion.

ATKINSON, Judge, Concurring in result.

I concur in the result reached by the majority but write separately because the majority opinion's discussion of this court's jurisdiction is inconsistent with applicable law. The majority relies on *Jackson v. State*, 144 So. 3d 658, 659 n.1 (Fla. 2d DCA 2014), for the conclusion that this court has jurisdiction in Mr. Redmond's direct appeal to review a sentencing issue he raised "in a motion to modify sentence brought pursuant to Florida Rule of Criminal Procedure 3.800(c)." The pertinent jurisdictional analysis in *Jackson* was consistent with Florida Rule of Appellate Procedure 9.140(i), which provides that "[t]he court must review all rulings and orders appearing in the record necessary to pass on the grounds of an appeal," because a ruling on the defendant's rule 3.800(c) motion to modify sentence appeared in the record and was necessary to pass on the grounds of the appeal in that case—that is, the defendant's argument that his sentence should have been reduced because his absence at sentencing was involuntary. *See Jackson*, 144 So. 3d at 659 (explaining the defendant's "understanding" that he would be sentenced to community control and probation but that the trial court sentenced him to prison after he failed to appear for sentencing). As such, the *Jackson* court's scope of review for the defendant's direct appeal of his judgment and sentence was arguably broad enough to

encompass the trial court's ruling on the defendant's rule 3.800(c) motion to modify sentence.

In this case, however, Mr. Redmond has not appealed an issue that could be appropriately raised in a rule 3.800(c) motion. The language of rule 3.800(c) necessarily presumes that the defendant's sentence is "legal," which ostensibly explains why the trial court's ability to reduce or modify the sentence is discretionary. See Fla. R. Crim. P. 3.800(c) ("A court *may* reduce or modify . . . a *legal sentence* imposed by it" (emphasis added)). Here, the issue Mr. Redmond raises on appeal is that his sentence is *illegal*. Mr. Redmond does not argue on appeal that the trial court had discretion to reduce or modify a legal sentence. Instead, he reiterates his argument first made in the trial court that his sentence did not comply with a statutorily mandated obligation to sentence him to probation for the purpose of completing a substance abuse course. See § 316.193(5), Fla. Stat. (2022). In short, Mr. Redmond argues that the trial court imposed an *illegal* sentence because it omitted a required component of probation, which is a "sentencing error." See *Jackson v. State*, 983 So. 2d 562, 572–74 (Fla. 2008). And under the circumstances of this case, correction of the "sentencing error" would be governed by rule 3.800(b). See Fla. R. Crim P. 3.800(b) ("A motion to correct any sentencing error, including an illegal sentence or incorrect jail credit, may be filed as allowed by this subdivision.").

Additionally, in the trial court, Mr. Redmond did not even advance the sentencing error that is pertinent to this appeal in his written rule 3.800(c) motion. Instead, he raised it for the first time orally at the hearing on his rule 3.800(c) motion.

So, contrary to the majority's analysis, Mr. Redmond has not sought reduction or modification under rule 3.800(c) in this appeal but

rather the correction of an illegal sentence. Importantly, this sentencing error can only be reviewed on direct appeal if a defendant contemporaneously objected at the time of sentencing or filed a motion to correct sentencing error under rule 3.800(b). See *Jackson*, 983 So. 2d at 571 ("[W]e adopted rule 9.140(d), Florida Rules of Appellate Procedure (now rule 9.140(e)), requiring that sentencing errors be preserved either through a contemporaneous objection or by motion under rule 3.800(b)."). But Mr. Redmond did not object to the trial court's failure to impose probation as part of his sentence at the time of sentencing. And the motion that he filed was styled as a motion to modify sentence pursuant to rule 3.800(c), not a motion to correct sentencing error pursuant to rule 3.800(b).

However, this court can treat Mr. Redmond's argument raised in the trial court as a rule 3.800(b) motion to correct sentencing error. See *Fenter v. State*, 632 So. 2d 685, 686 n.1 (Fla. 2d DCA 1994) ("[C]ourts have the authority to treat prisoner petitions as if the proper remedy were sought if it would be in the interest of justice to do so."); *Sawyer v. State*, 397 So. 3d 101 (Fla. 4th DCA 2024) (treating a "motion to correct a claimed illegal part of [a] sentence . . . as a timely-filed rule 3.800(b)(1) motion") ; cf. *Richardson v. State*, 719 So. 2d 39, 40 (Fla. 2d DCA 1998) ("Even though Richardson styled her motion as having been brought via rule 3.850, it would be in the interest of justice to treat any claims cognizable under rule 3.800(a) as having been raised in such a motion."). Mr. Redmond brought the sentencing error to the trial court's attention during the time in which he was allowed to appeal his sentence, which was within the time permitted by rule 3.800(b)(1). See Fla. R. Crim. P. 3.800(b)(1) ("During the time allowed for the filing of a notice of appeal of a sentence, a defendant or the state may file a motion to correct a

sentencing error."). And even though Mr. Redmond did not "*file* a motion" to correct the error, *id.* (emphasis added), the trial court addressed Mr. Redmond's ore tenus request to conform his sentence to the requirements of section 316.193(5) at the rule 3.800(c) motion hearing and expressly denied that relief in its written order denying the motion. Mr. Redmond's written rule 3.800(c) motion having been effectively amended at the hearing with tacit leave of court—albeit to add a claim not cognizable under that rule—a portion of the trial court's written order was then the functional equivalent of a denial of a rule 3.800(b) motion to correct sentencing error. *Cf. Roberts v. State*, 715 So. 2d 302, 303 (Fla. 5th DCA 1998) (reviewing the denial of the defendant's "motion to correct his sentences" and reversing his sentences after the defendant had "filed a rule 3.800 motion to modify or mitigate his sentences" but "[d]uring the hearing on his motion to modify, . . . orally moved to correct his sentences"). In other words, the trial court's order memorialized in writing a denial of a request for relief that should have been brought by filing a rule 3.800(b) motion but was instead asserted during proceedings attendant to a written rule 3.800(c) motion. Given this court's authority to treat the argument as having been asserted in the "proper" procedural vehicle, *Fenter*, 632 So. 2d at 686 n.1, Mr. Redmond's claim regarding the sentencing error was preserved for this court's review on direct appeal. As such, I agree with the majority that this court has jurisdiction to review the sentencing error and should reverse Mr. Redmond's sentence but concur only in result because I disagree with the basis for jurisdiction described in the majority opinion.

Opinion subject to revision prior to official publication.