

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2024-2695
LT Case No. 2023-CF-000758-A

JASON J. GANGA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Lake County.
Heidi Davis, Judge.

Hani Demetrious, of The Law Office of Robert David Malove,
P.A., Fort Lauderdale, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Deborah
Chance, Assistant Attorney General, Daytona Beach, for
Appellee.

October 2, 2026

WALLIS, J.

Appellant, Jason Ganga, appeals the judgment and sentence that were entered after a jury found him guilty of attempted second-degree murder, aggravated battery, and shooting into a vehicle. We reverse and remand for further proceedings.

After trial, the court sentenced Appellant to 30 years in prison on counts 1 and 2 with a 25-year minimum mandatory sentence followed by 5 years probation. It also sentenced him to 159 months in prison on count 3.

The State filed a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b)(1), and requested that the court modify the sentence so that it did not exceed a total of 30 years. The court held a hearing on the matter, but Appellant was not present. Appellant's attorney announced that he would waive Appellant's presence for purposes of the resentencing hearing. The court subsequently issued an Amended Sentence, which sentenced Appellant to 30 years in prison on counts 1 and 2 with a 25-year minimum mandatory and removed the probationary sentence. The court again sentenced Appellant to 159 months in prison on count 3. All sentences were to run concurrent with one another.

Appellant filed a Motion to Correct Sentencing Error pursuant to Rule 3.800(b)(2), arguing that the court violated his due process rights when it resentenced him without allowing him to be present at the hearing. The court denied Appellant's motion, finding that Appellant's presence was not required at the resentencing hearing because resentencing was ministerial.

Appellant challenges that ruling on appeal. The State commendably concedes that reversible error occurred below. We agree.

Florida Rule of Criminal Procedure 3.180(a)(9) requires the defendant's presence at pronouncement of the judgment and imposition of the sentence, including resentencing. *Jordan v. State*, 143 So. 3d 335, 338 (Fla. 2014). However, resentencing a defendant in his absence can be harmless error where resentencing only involves a ministerial act. *Id.* at 339. When a trial judge has discretion as to the new sentence, resentencing is not a ministerial act and the defendant's presence is required. *Id.*

Because the trial court could have imposed any sentence between 25 and 30 years in prison on counts 1 and 2, resentencing was not a ministerial act. *See id.* Furthermore, nothing in the record established that Appellant knowingly and voluntarily

waived his right to be present at resentencing, even though his attorney orally waived his presence at the hearing. *See Darwin v. State*, 259 So. 3d 260, 262 (Fla. 2d DCA 2018) (reversing and remanding for resentencing where defendant was not present at resentencing and the record did not establish a knowing, intelligent, and voluntary waiver of the right by the defendant). Therefore, we reverse and remand for a new resentencing hearing at which Appellant is entitled to be present.

In addition, we reverse the \$250.00 fine that was imposed pursuant to section 775.083, Florida Statutes, because the court did not orally announce that fine at either of the sentencing hearings. A fine imposed pursuant to section 775.083 is discretionary and must be orally announced at sentencing. *See Mattice v. State*, 393 So. 3d 842, 845 (Fla. 2d DCA 2024). On remand, the court shall also adjust the surcharge associated with the \$250.00 fine. In all other respects, we affirm the costs and fees imposed.

REVERSED and REMANDED, With Instructions.

EDWARDS and SOUD, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
