FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2023-3210

SHEILA MARIE BARGER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Walton County.
Kelvin C. Wells, Judge.

November 18, 2026

PER CURIAM.

Appellant Sheila Marie Barger challenges her conviction and sentence for leaving the scene of a crash involving death. She raises several issues on appeal, including the trial court's denial of her motion for judgment of acquittal, the jury instructions, the denial of her motion under Florida Rule of Criminal Procedure 3.800(b)(2), as well as the size of the jury that convicted her. We affirm in part and reverse in part, as detailed below.

First, we reject Barger's contention that she was entitled to a twelve-person jury. *See Salmon v. State*, 387 So. 3d 393 (Fla. 1st DCA 2024) (rejecting similar challenge and relying on *Williams v. Florida*, 399 U.S. 78 (1970)).

Next, we reverse in part the trial court's denial of Barger's rule 3.800(b)(2) motion.

The trial court should have granted Barger's request to strike two of the special conditions that appeared for the first time in the written probation order. One special condition required that Barger pay the cost of her drug testing, and another required her to pay a monthly $1.00 fee to First Step Funds. These special conditions were not orally pronounced at sentencing and thus should have been stricken. *See Parrish v. State*, 898 So. 2d 1074, 1075 (Fla. 1st DCA 2005) (reversing where the trial court imposed an unannounced special condition in a written order that appellant pay costs of drug testing, despite drug testing being a general condition); *Coupe v. State*, 591 So. 2d 304, 304 (Fla. 1st DCA 1991) (reversing "a condition of probation imposed by the trial court, payment of $1.00 per month to First Step, Inc. of Bay County, as the written probation order imposing such condition varied from the trial judge's oral sentencing pronouncement which did not impose such a fee").

Additionally, the trial court orally pronounced a lump sum of "court costs" amounting to $775. This amount included a discretionary fine of $342.86 under section 775.083, Florida Statutes, and a mandatory 5% surcharge of $17.14. The trial court erred by not orally pronouncing the discretionary fine of $342.86 individually, rather than collectively. *See Whitley v. State*, 376 So. 3d 79, 83 (Fla. 1st DCA 2023) (holding discretionary costs must be orally pronounced, not in a lump sum, to allow a defendant an opportunity to contest them). Thus, the discretionary fine should be struck, and because the surcharge attaches only to a valid fine, *see* § 938.04, Fla. Stat., it is struck as well. The trial court may still, however, impose the fine and surcharge if it gives Barger notice and follows the proper resentencing procedure. *Bryant v. State*, 302 So. 3d 995, 1000 (Fla. 1st DCA 2020).

Finally, the written sentence contains two scrivener's errors. The trial court orally pronounced a $100 fee for the "Local Governmental Trust." But when reduced to writing, this was mislabeled as "CF/MM Additional Court Cost Clerk" imposed "Pursuant to Section 938.05(1)(a)(b)," a statutory provision that

does not exist. We thus remand to correct this scrivener's error. *See Bielec v. State*, 297 So. 3d 699, 699 (Fla. 1st DCA 2020). The other scrivener's error concerns the improperly checked box on the probation order indicating that Barger "entered a plea of nolo contendere." Barger was convicted by a jury after pleading not guilty, so this scrivener's error should also be corrected on remand.

We affirm as to all other issues raised.

AFFIRMED in part, REVERSED in part, and REMANDED.

ROBERTS, RAY, and NORDBY JJ., concur.

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

Jessica J. Yeary, Public Defender, and Victor D. Holder, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and David Welch, Assistant Attorney General, Tallahassee, for Appellee.