NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THOMAS JAMES O'DONNELL, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D14-5147

Opinion filed December 18, 2015.

Appeal from the Circuit Court for Pinellas County; Philip J. Federico, Judge.

Howard L. Dimmig, II, Public Defender, and Pamela H. Izakowitz, Assistant Public Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Donna S. Koch, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Thomas James O'Donnell appeals his judgments and sentences for burglary and criminal mischief. We affirm in all respects except for the judgment for criminal mischief, which we reverse and remand for the correction of a scrivener's error. Although charged with criminal mischief as a third-degree felony, Mr. O'Donnell was convicted of this offense as a second-degree misdemeanor. He was properly

sentenced, but his judgment reflects that the offense is a third-degree felony. This scrivener's error shall be corrected on remand.

We note that counsel for Mr. O'Donnell filed a motion to mitigate sentence just before filing the notice of appeal. The trial court exercised its discretion to dismiss this motion, which it was authorized to do. See Mowatt v. State, 963 So. 2d 348 (Fla. 4th DCA 2007). The dismissal of this motion does not prevent the refiling of the motion in the sixty-day period following the issuance of mandate in this court. See Fla. R. Crim. P. 3.800(c).

Affirmed in part, reversed in part, and remanded.

ALTENBERND, SILBERMAN, and SALARIO, JJ., Concur.