

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

TROY WRIGHT,

Appellant,

v.

Case No. 5D19-1327

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 9, 2020

3.850 Appeal from the Circuit
Court for Orange County,
John M. Kest, Judge.

James S. Purdy, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, Rebecca Rock McGuigan and
Nora Hutchinson Hall, Assistant Attorneys
General, Daytona Beach, for Appellee.

PER CURIAM.

We affirm the denial of all issues raised by Troy Wright in his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief, except for Wright's argument that his counsel was deficient for failing to raise section 812.025, Florida Statutes (2012). Wright argues, and the State concedes, that under the facts of this case, Wright's dual

convictions for dealing in stolen property and petit theft are improper pursuant to section 812.025. See, e.g., *Hall v. State*, 826 So. 2d 268, 271 (Fla. 2002) (finding that section 812.025 prohibits a trial court from adjudicating a defendant guilty of both theft and dealing in stolen property in connection with one scheme or course of conduct).

As such, the remedy is to vacate Wright's conviction for petit theft. Cf. *Blackmon v. State*, 121 So. 3d 535, 548–49, 549 n.18 (Fla. 2013) (holding that where the jury was not properly instructed under section 812.025 but the defendant failed to request a proper instruction or to otherwise preserve the error for appellate review and the jury returns dual guilty verdicts for both theft and dealing in stolen property that are contrary to section 812.025, the proper remedy is vacating the conviction for the lesser offense); *Blocker v. State*, 247 So. 3d 649, 650 (Fla. 5th DCA 2018) (holding appropriate postconviction remedy for error based on separate convictions for dealing in stolen property and petit theft arising out of same course of criminal conduct or scheme was vacatur of lesser offense of petit theft).

Accordingly, we reverse and remand to the trial court to grant Wright's postconviction motion as to this issue and to vacate his conviction and sentence for petit theft. We otherwise affirm.

AFFIRMED in part; REVERSED in part; REMANDED with directions.

LAMBERT, EISNAUGLE, and SASSO, JJ., concur.