

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

JULY TERM 2010

TOMMY BERNARD JACKSON,

Petitioner,

v.

Case No. 5D10-2877

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed November 12, 2010.

Petition Alleging Ineffectiveness
of Appellate Counsel,
A Case of Original Jurisdiction.

Tommy Bernard Jackson, East
Palatka, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Ann M. Phillips,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

Tommy Jackson petitions this Court for a writ of habeas corpus based upon a claim of ineffective assistance of appellate counsel for failure to file a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). He claims his attorney should have challenged the legality of his drug offender probation. We agree.

Jackson was convicted of possession of cocaine with intent to sell, which is not one of the enumerated offenses for which drug offender probation can be imposed under section 948.20, Florida Statutes (2007). Therefore, we grant Jackson's petition and remand to the lower court so that Jackson's drug offender probation can be converted to regular probation with or without special conditions, as the court deems appropriate. See Taylor v. State, 17 So. 3d 310, 311 (Fla. 5th DCA 2009); State v. Roper, 915 So. 2d 622, 623-24 (Fla. 5th DCA 2005).

PETITION GRANTED and CAUSE REMANDED.

GRIFFIN, EVANDER, and JACOBUS JJ., concur.