

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

JULY TERM 2013

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

ANDREW MCCOMAS,

Appellant,

v.

Case No. 5D12-4881

STATE OF FLORIDA,

Appellee.

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Opinion filed September 6, 2013

Appeal from the Circuit Court
for Brevard County,
Emerson R. Thompson, Jr., Senior Judge.

Andrew McComas, Bristol, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca Roark Wall,
Assistant Attorney General, Daytona
Beach, for Appellee.

ON MOTION FOR REHEARING

PER CURIAM.

We deny the motion for rehearing en banc but sua sponte grant rehearing, withdraw our prior opinion, and substitute the following in its place.

McComas was convicted of armed burglary of a dwelling, dealing in stolen property, grand theft (of several items), possession of a firearm by a convicted felon, and grand theft of a firearm. For the armed burglary of a dwelling conviction, McComas

was sentenced to twenty years in prison with a ten-year minimum mandatory as a habitual felony offender. He was given concurrent prison sentences of less duration for all of the other convictions.

The dealing in stolen property conviction involved the sale of the firearm that was the subject of one of the grand theft charges, and both crimes were part of one scheme or course of conduct. In such instances, section 812.025, Florida Statutes (2011), prohibits convictions for both grand theft and dealing in stolen property. The State concedes in its response to the Motion for Rehearing that it was error to convict McComas of both offenses. In Haywood v. State, 73 So. 3d 824, 825 (Fla. 5th DCA 2011), this court held that the less serious conviction for grand theft must be reversed. See also Ridley v. State, 407 So. 2d 1000 (Fla. 5th DCA 1981). Accordingly, we reverse the conviction and sentence (five years in prison) for grand theft involving theft of the firearm and remand this case to the trial court to correct the judgment. As we did in Haywood, we certify conflict with Kiss v. State, 42 So. 3d 810 (Fla. 4th DCA 2010). The convictions and sentences for the other offenses previously mentioned are affirmed.

AFFIRMED in part; REVERSED in part; REMANDED; CONFLICT CERTIFIED.

SAWAYA, COHEN and BERGER, JJ., concur.