

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

MOSES TAYLOR,

Appellant,

v.

Case No. 5D13-479

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 23, 2013

Appeal from the Circuit Court
for Brevard County,
Robert A. Wohn, Jr., Judge.

James S. Purdy, Public Defender, and
Ailene S. Rogers, Assistant Public
Defender, Daytona Beach, for Appellant.

Moses Taylor, Milton, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

GRIFFIN, J.

This is an *Anders*¹ appeal in which we find no reversible error.

Despite affirmance, we remand the judgment and sentence on Count 2 for
correction of a scrivener's error in the written sentencing documents. See, e.g.,

¹ *Anders v. California*, 386 U.S. 738 (1967).

Johnson v. State, 84 So. 3d 452 (Fla. 5th DCA 2012) (affirming *Anders* appeal, but remanding for correction of scrivener's error). Here, the trial court habitualized appellant, Moses Taylor ["Moses"], as to Count 1 (Sale of Cocaine), but did not provide for the same enhancement for Count 2 (Possession of Cocaine). Nevertheless, the written sentence as to Count 2 incorrectly indicates habitual offender enhancement.

Consistent with the oral pronouncement (and the plea agreement), Moses received a five-year statutory maximum sentence for Count 2, a third degree felony. Section 775.084(1)(a)3., Florida Statutes, does not allow enhanced habitual offender sentences for possession of a controlled substance; thus, it was clearly not the intention of the trial court to sentence Moses as a habitual offender for Count 2.

AFFIRMED. Sentence on Count 2 VACATED; and REMANDED for correction.
LAWSON and COHEN, JJ., concur.