

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JAMES EDWARD KERRIGAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D11-6101

Opinion filed August 21, 2012.

An appeal from the Circuit Court for Nassau County.
Robert M. Foster, Judge.

Nancy A. Daniels, Public Defender, and M. Gene Stephens, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Giselle Denise Lyles, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

We affirm Appellant's convictions and his sentence for Count 1, but upon
the State's proper concession of error, we reverse and remand for resentencing on

Count 2 (Domestic Battery). The record does not contain any evidence of a prior conviction of battery, aggravated battery, or felony battery that would allow the offense to be punished as a third-degree felony under section 784.03(2), Florida Statutes (2010). Without such evidence, the offense of domestic battery is a first-degree misdemeanor punishable by up to one year in jail. See §§ 784.03(1)(b), 775.082(4)(a), Fla. Stat. (2010). Therefore, the sentence imposed for Count 2 – 84 days of time served in jail followed by one year of community control and one year of probation – exceeds the statutory maximum and is illegal.

AFFIRMED in part; REVERSED in part; REMANDED for further proceedings.

THOMAS, WETHERELL, and MARSTILLER, JJ., CONCUR.