

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

SHAWN MICHAEL SPROTT,
Appellant,

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

v.

CASE NO. 1D12-2264

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed October 31, 2012.

An appeal from the Circuit Court for Levy County.
David A. Glant, Judge.

Nancy A. Daniels, Public Defender, and Glenna Joyce Reeves, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Angela R. Hensel, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant pled nolo contendere to the counts of forgery (uttering a forged bill),
possession of forged notes or bills, an attempted scheme to defraud, and possession
of a forged, stolen or fictitious driver's license—all third-degree felonies. See §§
831.09; 831.08; 817.034(4) & 777.04; 322.212(1), Fla. Stat. (2011). On his

Criminal Punishment Code scoresheet, appellant scored twenty “total sentencing points,” corresponding to a mandatory nonstate prison sanction under section 775.082(10), Florida Statutes (2011). Nevertheless, that section authorizes the trial court to impose a prison sentence if it makes written findings “that a nonstate prison sanction could present a danger to the public.” § 775.082, Fla. Stat. (2011). The trial court did so in appellant’s case and imposed a sentence of twenty-four months’ imprisonment. Now, on appeal, appellant contends his prison sentence violates Apprendi¹ and Blakely² because it exceeds the maximum sentence the trial court could impose under section 775.082(10), based on facts neither admitted to by appellant nor as found by a jury. Alternatively, appellant contends the trial court erred in imposing a prison sentence because the record does not support the trial court’s findings that a nonstate prison sanction would present a danger to society. Because the state properly concedes error on the second issue based on our controlling decision in Jones v. State, 71 So. 3d 173 (Fla. 1st DCA 2011),³ we conclude, as did the majority in Jones, that we need not reach the Apprendi/Blakely issue. Id. at 174.⁴ Accordingly, we reverse appellant’s

¹ Apprendi v. New Jersey, 530 U.S. 466, 490 (2000).

² Blakely v. Washington, 542 U.S. 296, 303-04 (2004).

³ Jones involved circumstances which, in all relevant aspects, were identical to those in the instant case.

sentence and remand for resentencing. On remand, the trial court shall sentence appellant to a nonstate prison sanction as required by section 775.082(10).⁵

REVERSED and REMANDED with directions.

PADOVANO, MARSTILLER, and SWANSON, JJ., CONCUR.

⁴ But see Jones 71 So. 3d at 176 (Thomas, J., concurring in result only).

⁵ Jones cites to Shull v. Dugger, 515 So. 2d 748, 750 (Fla. 1987) (holding in a case involving an *upward* departure under the sentencing guidelines “a trial court may not enunciate new reasons for a departure sentence after the reasons given for the original departure sentence have been reversed by an appellate court”), but compares Jackson v. State, 64 So. 3d 90 (Fla. 2011) (holding that a trial court may again impose a *downward* departure sentence under the Criminal Punishment Code on remand where the appellate court reverses the grounds for the initial departure). See Jones 71 So. 3d at 176.