

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

DONALD ALLEN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D12-3021

Opinion filed October 19, 2012.

An appeal from the Circuit Court for Bay County.
Elijah Smiley, Judge.

Donald Allen, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Donna A. Gerace, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant filed a rule 3.850 motion arguing that his conviction for simple possession of cocaine was incorrectly listed on the judgment as a second-degree felony when it is a third-degree felony. The appellant is correct, and in

response to this Court's order issued pursuant to Toler v. State, 493 So. 2d 489 (Fla. 1st DCA 1986), the state concedes error. See § 893.13(6)(a), Florida Statutes (1997); Grandison v. State, 691 So. 2d 591 (Fla. 1st DCA 1997). Consequently, the lower court is directed to treat the motion as having been filed under rule 3.800(a), and to correct the judgment to reflect that the appellant's conviction for simple possession constitutes a third-degree felony rather than a second-degree felony. See id.

REVERSED AND REMANDED with directions.

DAVIS, VAN NORTWICK, and ROWE, JJ., CONCUR.