

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

JOSE LUIS BARAJAS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-3947

February 13, 2008

PER CURIAM.

Jose Luis Barajas appeals the denial of his rule 3.850 motion. At a hearing on some of his claims, the state agreed with Barajas that his conviction for count V should be vacated based on a double jeopardy violation. The trial court accepted the concession and recognized that this would require a new sentencing hearing with a corrected scoresheet. The written order vacated the conviction and sentence on count V, but Barajas was not re-sentenced on the remaining charges. On appeal, the state agrees that re-sentencing is required. *See State v. Anderson*, 905 So. 2d 111 (Fla. 2005) (holding that the proper test for determining whether re-sentencing is required as a result of a scoresheet error raised in a 3.850 motion is whether the record conclusively shows the same sentence would have been imposed with a correct scoresheet); *Leyva v. State*, 929 So. 2d 1210 (Fla. 4th DCA 2006). Accordingly, we reverse the circuit court's order and remand for the court to re-sentence Barajas on the remaining charges with a corrected scoresheet.

We affirm the denial of Barajas' remaining claims.

STONE, FARMER and MAY, JJ., concur.

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Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Dan Vaughn, Judge; L.T. Case No. 01-293 CF.

Jose Luis Barajas, Avon Park, pro se.

Bill McCollum, Attorney General, Tallahassee, and Don M. Rogers,
Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing