

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

THORTON SEMONE PETTWAY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-709

[May 16, 2007]

SHAHOOD, J.

Appellant, Thorton S. Pettway, was charged with possession with intent to sell/deliver cannabis within 1000 feet of a school and possession of more than twenty grams of cannabis. Appellant appeals his conviction and sentence on the two counts charged after being found guilty following a jury trial.

Appellant raises four issues on appeal, the first three of which we hold to be without merit and affirm. As his fourth issue, appellant argues the trial court committed fundamental error in entering two judgments for possession of the same cannabis as violative of double jeopardy.

The State concedes, and we agree, that one may not be convicted twice for possession of the same cannabis. *See Sims v. State*, 793 So. 2d 1153 (Fla. 4th DCA 2001). “Convictions for possession with intent to sell marijuana and simple possession of the same marijuana violate a defendant’s double jeopardy rights. *Paccione v. State*, 698 So. 2d 252 (Fla. 1997).” *Sims*, 793 So. 2d at 1154.

Accordingly, we remand to the trial court with directions to vacate appellant’s conviction and sentence on the lesser of the two convictions, possession of more than twenty grams of cannabis.

Affirmed; Remanded with directions.

STEVENSON, C.J., and GROSS, J., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Larry Schack, Judge; L.T. Case No. 04-936 CFMA.

Carey Haughwout, Public Defender, and Karen Kantner Cassidy, Special Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing