

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2010

SHEMIKA LASHONDA BELL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-4045

[December 15, 2010]

PER CURIAM.

Shemika Bell timely appeals the trial court's denial of her motion to correct a sentencing error under Florida Rule of Criminal Procedure 3.800(b)(2). We reverse and remand for correction of the scoresheet and resentencing.

Bell was on probation. An affidavit of violation of probation was filed, but was ultimately dismissed. A few months later, a second affidavit of violation was filed for conduct different than that covered in the first affidavit. Appellant admitted the violations contained in the second affidavit. Her scoresheet erroneously contained six extra points for a community sanction violation, apparently based on the first affidavit of violation that had been dismissed.

The record does not conclusively establish that the trial court would have sentenced Bell to the same sentence in this case had the scoresheet been correct. *See Sanders v. State*, 35 So. 3d 864, 870-71 (Fla. 2010). From the comments made in the sentencing transcript, it appears that both the trial judge and the prosecutor operated under the assumption that Bell's probation had previously been violated.

Reversed.

GROSS, C.J., TAYLOR and GERBER, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; William L. Roby, Judge; L.T. Case No. 562007CF003083A.

Carey Haughwout, Public Defender, and David John McPherrin, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Joseph A. Tringali, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.