

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

BRYAN COLBERT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-557

[August 5, 2009]

PER CURIAM.

With respect to appellant's claim to be entitled to a sentence of not more than six years, only if a violation is technical or non substantive is a sentence on revocation of supervision limited to six years. See § 958.14, Fla. Stat. (2004) (stating "no youthful offender shall be committed to the custody of the department for a **substantive violation** for a period longer than the maximum sentence for the offense for which he or she was found guilty, with credit for time served while incarcerated") (emphasis added).

With respect to his claim to be entitled to be sentenced to not more than 364 days, because appellant was placed in a boot camp run by the Broward Sheriff's Office, and not the Department of Corrections, the circuit court's sentencing authority was not limited by section 958.045(5)(c). See *Lee v. State*, 884 So. 2d 460, 461-62 (Fla. 4th DCA 2004) (holding that because appellant had been placed in sheriff's boot camp facility rather than that of Florida Department of Corrections, the trial court's sentencing authority was not limited by section 958.045(5)(c)).

With respect to his claim that most of the charges pending for sentencing on revocation of probation should have been scored as prior record rather than as additional offenses, see *State v. Alberto*, 847 So. 2d 1091 (Fla. 4th DCA 2003) (holding that, where offenses are pending for sentencing at the same time as the primary offense, those offenses are considered "additional" offenses even if they also meet the definition of "prior record" under rule 3.704(d)); and *Moses v. State*, No. 4D08-1935,

2009 WL 1456732 (Fla. 4th DCA May 27, 2009) (holding that a violation of probation offense which is sentenced at the same time as the primary offense should be scored as an additional offense, **not** as prior record).

Affirmed.

GROSS, C.J., MAY and CIKLIN, JJ., concur.

* * *

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Cynthia G. Imperato, Judge; L.T. Case Nos. 99-16595CF10, 99-16598CF10, 99-18076CF10, 99-18652CF10, 03-08714CF10, 03-16804CF10 and 04-11382CF10.

Bryan Colbert, Raiford, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.