

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MILTON EARLE THOMAS,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D04-2518

Opinion filed September 2, 2005.

Appeal from the Circuit Court
for Lee County;
Edward J. Volz, Jr., Acting Circuit Judge.

James Marion Moorman, Public
Defender, and Denise O. Simpson,
Special Assistant Public Defender,
Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Dale E. Tarpley,
Assistant Attorney General, Tampa,
for Appellee.

CANADY, Judge.

Milton Earle Thomas appeals two sentences imposed on him following
revocation of his probation. Thomas argues and the State concedes that the two

sentences are illegal because they exceed the applicable statutory maximum. Thomas earlier raised this sentencing issue by way of a Florida Rule of Criminal Procedure 3.800(b)(1) motion, but his motion was deemed denied due to the trial court's inaction. See Fla. R. Crim. P. 3.800(b)(1)(B).

The trial court imposed concurrent sentences of seventy-two months for a violation of section 817.563(1), Florida Statutes (2000), and a violation of section 893.13(6)(a), Florida Statutes (2002). Both sentenced offenses are third-degree felonies, for which the statutory maximum sentence is five years. See § 775.082(3)(d), Fla. Stat. (2000 & 2002). Under the Criminal Punishment Code, the maximum sentence that may be imposed for an offense is the statutory maximum for that offense, unless the lowest permissible prison sentence calculated on the offender's scoresheet exceeds the statutory maximum. See § 921.0024(2), Fla. Stat. (2000 & 2002); Fla. R. Crim. P. 3.704(d)(25). Thomas's Criminal Punishment Code scoresheets for his offenses show lowest permissible prison sentences at a level lower than the applicable statutory maximum sentences.

The sentences of seventy-two months thus exceed the applicable five-year (sixty-month) maximum sentences permissible for these offenses under the Criminal Punishment Code. We reverse the sentences and remand for resentencing within the statutory maximum.

Sentences reversed; remanded for resentencing.

FULMER, C.J., and STRINGER, J., Concur.