

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SHAWN E. HOLLIDAY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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Case No. 2D12-2535

Opinion filed February 20, 2013.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for Polk
County; John Radabaugh, Judge.

Shawn E. Holliday, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Christina Zuccaro,
Assistant Attorney General, Tampa, for
Appellee.

LaROSE, Judge.

Shawn Holliday appeals the summary denial of his motion for
postconviction relief filed under Florida Rule of Criminal Procedure 3.850. Upon the
State's concession of error and our own record review, we reverse and remand for
further proceedings.

Mr. Holliday pleaded guilty to charges of attempted burglary of a dwelling

and grand theft. The trial court placed him on probation. After a violation of probation in approximately December 2009, the trial court modified the probation.

Mr. Holliday again violated his probation by committing new law violations. In September 2011, he entered a plea to the new charges and admitted violating his probation. According to Mr. Holliday, his counsel advised him that the State was offering a minimum guidelines sentence of approximately forty-six months in prison. The plea form listed 46.2 months as the agreed-upon sentence. The sentencing scoresheet reflected thirty-six points in the Community Sanction violation section, apparently representing three prior probation violations.

On the day after sentencing, Mr. Holliday allegedly learned that the scoresheet was erroneous. He claims to have had only one prior probation violation. A correct scoresheet would have yielded a sentence of about thirty-five months. The State concedes that the postconviction court erred in summarily denying Mr. Holliday's rule 3.850 motion. The State also seems to concede that Mr. Holliday is entitled to resentencing. We do not decide that issue. We conclude that remand for proceedings on the merits of the claim is appropriate.

Reversed and remanded.

ALTENBERND and DAVIS, JJ., Concur.