

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

INDALESIO LODISLAO BASALDUA,

Appellant,

v.

Case No. 5D16-722

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 16, 2016

Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

James S. Purdy, Public Defender, and
Steven N. Gosney, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Indalesio Basaldua appeals his sentence for driving while license suspended. He argues, and the State properly concedes, that the trial court violated the prohibition against double jeopardy by resentencing him to prison after he had already served the

entirety of his county jail sentence on the charge.¹ Accordingly, we vacate Basaldua's sentence on the charge of driving while license suspended and remand for the trial court to reinstate his sentence of time served.² See Stallings v. State, 182 So. 3d 786, 787 (Fla. 5th DCA 2015) ("Once a sentence has already been served, even if it is an illegal sentence or an invalid sentence, the trial court loses jurisdiction and violates the Double Jeopardy Clause by reasserting jurisdiction and resentencing the defendant to an increased sentence." (quoting Maybin v. State, 884 So. 2d 1174, 1175 (Fla. 2d DCA 2004))).

Sentence VACATED; REMANDED for resentencing.

SAWAYA, BERGER and LAMBERT, JJ., concur.

¹ Basaldua's double jeopardy claim is properly raised for the first time on appeal. See Vasquez v. State, 778 So. 2d 1068, 1070 (Fla. 5th DCA 2001) ("A violation of double jeopardy constitutes fundamental error which may be raised for the first time on appeal." (citing Johnson v. State, 747 So. 2d 1027 (Fla. 2d DCA 1999))).

² Basaldua does not challenge, and this opinion does not effect, the concurrent 60-month sentences he received on the charges of aggravated fleeing or attempting to elude and grand theft.