

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

CLEMMIE SANDERS,

Appellant,

v.

Case No. 5D19-1194

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 22, 2019

3.850 Appeal from the Circuit
Court for Orange County,
Elaine A. Barbour, Judge.

Clemmie Sanders, Sneads, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Clemmie Sanders appeals the postconviction court's summary denial of his motion and amended motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. After careful consideration, we affirm the postconviction court's summary denial with regard to all but one of the issues raised on appeal. We reverse and remand with regard to an issue Sanders raised concerning whether the sentence he

received following his conviction for violation of probation was improperly increased based upon consideration of an allegedly erroneous Criminal Punishment Code (“CPC”) scoresheet.

The record does not establish whether the nine points for a prior robbery conviction arising out of case number 29-1989-CF-1315-B were properly included on his CPC scoresheet. The postconviction court remarked that, even if those nine points were included erroneously, the error was harmless because the trial court did not impose the lowest permissible sentence, and the postconviction court concluded that the sentencing court would have imposed the same sentence even if those nine points had not been listed on Sanders’ scoresheet. Nothing in the records attached to its order summarily denying Sanders’ motion **conclusively** supports the postconviction court’s conclusion. “When a scoresheet error is raised in a timely rule 3.850 motion, resentencing is required unless the record shows conclusively that the trial court would have imposed the same sentence using a corrected scoresheet.” *Alexis v. State*, 258 So. 3d 471, 473 (Fla. 4th DCA 2018) (citing *Sanders v. State*, 35 So. 3d 864, 870–71 (Fla. 2010)). We cannot make that determination from the records attached to the postconviction court’s order in this case.

Accordingly, we reverse and remand for the postconviction court to attach records that conclusively prove either that: (1) there was no scoresheet error; or (2) if the nine points for robbery were included by error, that error did not affect or contribute to the sentencing decision. Alternatively, the postconviction court may conduct an evidentiary hearing to determine if inclusion of the nine points was an error, as Sanders asserts, and as the postconviction court assumed for the sake of considering Sanders’ motion. If the

postconviction court determines that there was no scoresheet error, then no further action will be required. However, if Sanders proves there was an error in his CPC scoresheet, the postconviction court must determine whether the record conclusively proves that the same sentence would have been imposed by the trial court without that error. If the record does not conclusively establish that the same sentence would have been imposed by the trial court, then the postconviction court shall resentence Sanders based upon a corrected scoresheet. We affirm the denial of Sanders' other claims without further discussion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

EDWARDS and EISNAUGLE, JJ., and JACOBUS, B.W., Senior Judge, concur.