

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

MAURIO HALL,

Appellant,

v.

Case No. 5D18-3505

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 14, 2020

Appeal from the Circuit Court
for Seminole County,
Melanie Chase, Judge.

Maria DeLiberato and Marie-Louise
Samuels Parmer, of Parmer DeLiberato,
P.A., Tampa, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant, Maurio Hall, was convicted after a jury trial of racketeering ("RICO"), possession of heroin, possession of cocaine with intent to sell or deliver, conspiracy to sell or deliver MDMA (3,4-methylenedioxymethamphetamine), and conspiracy to sell or deliver heroin. He raises several issues on appeal, only one of which we find to have

merit. For the following reasons, Appellant's conviction for conspiracy to sell MDMA is reversed. We affirm Appellant's remaining convictions without further discussion.

Appellant's conviction for conspiracy to sell MDMA was predicated upon testimony from an unidentified voice heard over a taped recording of a telephone conversation between the voice and Appellant. In that recording, the unknown caller agreed to buy some MDMA from Appellant, along with other drugs. Such evidence is not sufficient to prove a "conspiracy," as Appellant was simply agreeing to sell MDMA, while the caller was agreeing to purchase the drug from Appellant. In other words, a typical "buy/sell" transaction was discussed. There was no evidence in the record of the two parties agreeing to perform the same crime, i.e., either the purchase or the sale of MDMA; and thus, no conspiracy was proven. See *Schlicher v. State*, 13 So. 3d 515, 517–18 (Fla. 4th DCA 2009).

For the reasons stated above, Appellant's conviction for conspiracy to sell or deliver MDMA is reversed. Additionally, because the record does not conclusively show that the trial court would have imposed the same sentences on Appellant's other convictions without the now-reversed conviction for conspiracy to sell or deliver MDMA, this matter is remanded to the trial court for Appellant to be resentenced on his remaining convictions using a corrected scoresheet. See *Pierce v. State*, 281 So. 3d 569, 571 (Fla. 5th DCA 2019) ("In general, when the vacation of a conviction would result in changes to the defendant's scoresheet, the defendant is entitled to be resentenced using a corrected scoresheet." (quoting *Tundidor v. State*, 221 So. 3d 587, 605 (Fla. 2017))).

AFFIRMED, in part; REVERSED, in part; REMANDED.

EISNAUGLE and SASSO, JJ., and TAKAC, M.G., Associate Judge, concur.