

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

JULY TERM 2002

FREDDIE OWEN FELDER,

Appellant,

v.

Case No. 5D02-1947

STATE OF FLORIDA,

Appellee.

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Opinion filed September 27, 2002

3.800 Appeal from the Circuit Court
for St. Johns County,
Robert K. Mathis, Judge.

Freddie Owen Felder, Lake Butler, pro se .

Robert A. Butterworth, Attorney General,
Tallahassee, and Robin A. Compton, Assistant
Attorney General, Daytona Beach, for Appellee.

SAWAYA, J.

Freddie Owen Felder appeals the summary denial of his rule 3.800(a) motion in which he alleged a guideline scoresheet miscalculation apparent on the face of the record.¹ Specifically, the guideline scoresheet indicates that 18 points were scored for community

¹Felder also claims that his sentence is illegal because his sentence of 82 months exceeds the statutory maximum of 60 months for a third degree felony. If the scoresheet calculation is correct, Felder's claim has no merit. See Mays v. State, 717 So. 2d 515 (Fla. 1998) (holding that where the guideline sentence exceeds the statutory maximum, it is the guideline sentence and not the statutory maximum which controls). Obviously, if Felder is correct that too many points were assessed for the community control violations, his scoresheet will have to be corrected and a sentence imposed accordingly.

sanction violations, which would be correct if Felder had three community sanction violations. See Fla. R. Crim. P. 3.703(d)(17) (providing that six points are to be scored for each community sanction violation). However, Felder alleges that he only had one violation.

Without attaching any portion of the record to refute Felder's claim, the trial court denied Felder's motion, finding that the assessment of points on the scoresheet was proper. As explained in Moore v. State, 741 So. 2d 577 (Fla. 5th DCA 1999), the burden is on the trial court to attach portions of the record refuting a defendant's rule 3.800(a) claim. In the instant case, Felder's allegations are facially sufficient and are not refuted. Therefore, the trial court's order is reversed and the case is remanded for the trial court to either attach portions of the record refuting Felder's claim or to grant the requested relief. R E V E R S E D a n d R E M A N D E D.

HARRIS and ORFINGER, R. B., JJ., concur.