

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**DENNIS COX,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D15-801

[ May 18, 2016 ]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 05-017017 CF10B.

Dennis Cox, Crawfordville, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Dennis Cox appeals the denial of his “Motion for Recalculation of Scoresheet and for Resentencing Based on Reduction of the Sentencing Range as a Result of the Dismissal of Attempted Second Degree Murder with a Firearm.” He makes two arguments on appeal. First, the trial court erred in failing to recalculate his sentence after the State nolle prossed his conviction of attempted second-degree murder. Second, the trial court erred in not considering a downward departure. We agree with his first argument and reverse.

Cox was convicted of robbery with a firearm and attempted second-degree murder. He was sentenced to forty years for each count, to run concurrently. The State later nolle prossed the attempted second-degree murder charge and the trial court vacated that conviction and sentence. However, the trial court did not recalculate the sentence or issue a new scoresheet.

The State argues that if there was error, it was harmless because the trial court “could have imposed” the same sentence. *See Brooks v. State*,

969 So. 2d 238, 239 (Fla. 2007). However, this standard is used when there is a sentencing scoresheet error. *Id.* The sentencing scoresheet in the record was not erroneous at the time it was completed. The error here was that the trial court never made a *new* sentencing scoresheet to recalculate the sentence for the robbery after the attempted second-degree murder charge was vacated. Therefore, we reverse and remand for recalculation of the sentence.

*Reversed and remanded.*

STEVENSON, GERBER and LEVINE, JJ., concur.

\* \* \*

***Not final until disposition of timely filed motion for rehearing.***