

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

NELSON BAPTISTE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-185

[January 10, 2018]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Dina A. Keever-Agrama, Judge; L.T. Case No. 50-2009-CF-007177-BXXX-MB.

Antony P. Ryan, Regional Counsel, and Richard G. Bartmon, Assistant Regional Counsel, Office of Criminal Conflict and Civil Regional Counsel, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Kimberly T. Acuña, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We affirm the denial of appellant's motion for postconviction relief after an evidentiary hearing. *See Fla. R. Crim. P. 3.850.*

However, we remand for resentencing. In *Baptiste v. State*, 165 So. 3d 746 (Fla. 4th DCA 2015), we held that appellant's convictions for home invasion robbery and burglary arising from a single criminal episode violated double jeopardy. On remand, the burglary conviction was vacated in February, 2016. The record does not reflect whether appellant was resentenced with a corrected scoresheet that does not include the burglary conviction. Appellant is entitled to be sentenced with a new scoresheet. *See Fernandez v. State*, 199 So. 3d 500, 502 (Fla. 2d DCA 2016). We note that there is no record evidence that the court would have imposed the same sentence with a different scoresheet. *Cf. Tundidor v. State*, 221 So. 3d 587, 605-07 (Fla. 2017).

Remanded for resentencing.

GERBER, C.J., GROSS and MAY, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.