

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

DAVID THOMAS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-1341

[December 7, 2005]

PER CURIAM.

David Thomas appeals the trial court's summary denial of his Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief. The motion was untimely filed under rule 3.850, but raised a claim to correct an illegal sentence that is evident from the face of the record, and as such, can be raised under rule 3.800. Thomas was illegally sentenced under the 1995 guidelines and has standing to challenge his illegal sentence. *Heggs v. State*, 759 So. 2d 620 (Fla. 2000); *Trapp v. State*, 760 So. 2d 924 (Fla. 2000). Pursuant to *Anderson v. State*, 905 So. 2d 111 (Fla. 2005), the record does not conclusively prove that the same sentence would have been imposed with a correct scoresheet. Therefore the trial court's denial of this claim must be reversed, and this case remanded for either the attachment of record proof that the same sentence would have been imposed, or resentencing. *Frazier v. State*, 912 So. 2d 54, 55 (Fla. 4th DCA 2005). We affirm as to all other claims.

STONE, HAZOURI and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 98-12028 CF10A.

David Thomas, South Bay, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.