

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

CHRISTOPHER PARSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-1907

[November 16, 2005]

PER CURIAM.

Christopher Parson appeals a trial court order summarily denying his motion for post conviction relief, as amended. We affirm in part, and reverse and remand in part.

Parson pleaded guilty to two counts of DUI causing serious bodily injury and felony DUI causing injury in 2001, and was sentenced to concurrent terms of 10 years in prison. His sentences were corrected to 199.4 months in prison in 2002. He filed a timely motion for post-conviction relief, alleging: (1) ineffective assistance of trial counsel for failure to move to suppress blood test results; (2) ineffective assistance of trial counsel for failure to investigate and advise Parson that certain prior convictions could not be used in his sentencing guidelines scoresheet and (3) ineffective assistance of counsel for advising Parson to plead to the charges. We affirm without discussion the trial court's summary denial of claims one and three, but reverse and remand the summary denial of claim two.

In that claim, Parson alleged that he had five prior convictions (four for DUI and one for DWI) obtained without counsel in circumstances in which he was entitled to counsel and that these convictions should not have been factored into his criminal punishment code scoresheet. He alleged that counsel failed to investigate and advise him that these five prior convictions could not be used to enhance his sentence. He further alleged that he would not have pleaded guilty had he known that these five prior convictions could not have been scored.

The trial court erred in summarily denying this claim on the grounds that it should have been brought on direct appeal. It is a legally sufficient claim for relief under Florida Rule of Criminal Procedure 3.850. *See Brye v. State*, 677 So. 2d 1357 (Fla. 1st DCA 1996). The scoresheet attached to the trial court's order shows that 1.2 points were added for his prior record based in part on five prior convictions for DUI, which he claimed were erroneously scored because they were uncounseled convictions.

Parson did not argue in his motion that his pleas to the charged offenses were invalid because the offenses themselves were enhanced based on uncounseled prior convictions. We deem the State's discussion and distinction of *State v. Beach*, 592 So. 2d 237 (Fla. 1992) largely inapposite. Instead, Parson claimed ineffective assistance of counsel for failure to investigate and advise him that points on his scoresheet should not have been added, and that these points led to a greater sentence. We reverse the trial court's summary denial of this claim, and remand for either attachments of portions of the record refuting it or an evidentiary hearing on the claim.

AFFIRMED in part; REVERSED in part; REMANDED with directions.

GUNTHER, FARMER and SHAHOOD, JJ., concur.

* * *

Appeal of order denying rule 3.805 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jorge Labarga, Judge; L.T. Case No. 01-5445CF A02.

Christopher Parson, East Palatka, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Georgina Jimenez-Orosa, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.