

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2006*

**ANDREW E. PACHECO,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D06-1560

[September 1, 2006]

PER CURIAM.

Andrew Pacheco appeals the summary denial of a rule 3.850 motion. In his motion, he argued in part that it was error to add 12 points to his Criminal Punishment Code scoresheet for a community sanction violation because the offense committed in case number 02-7205 occurred before he was placed on probation in case number 01-11925.

The records before this court reflect that appellant committed the offense in case number 02-7205 on April 5, 2002. He entered his plea and was placed on probation in case number 01-11925 on July 29, 2002. As a result, case number 02-7205 could not be used to assess points for a community sanction violation for the violation of appellant's probation in case number 01-11925. See § 921.0024(1)(b), Fla. Stat. (2002); Fla. R. Crim. P. 3.704(d)(16).

Correcting this error would reduce the lowest permissible sentence on appellant's scoresheet and in turn reduce the maximum sentence he could receive for the third degree felonies that were pending for sentencing. § 921.0024(2), Fla. Stat.

Accordingly, we reverse the denial of appellant's motion and remand for record attachments that show the state did not rely on case number 02-7205 in assessing 24 total points for community sanction violations. If no records refute this claim, appellant is entitled to resentencing with a corrected scoresheet. The denial of appellant's remaining claims is affirmed.

GUNTHER, KLEIN and SHAHOOD, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Stanton S. Kaplan, Judge; L.T. Case Nos. 01-11925 CF10, 02-7205 CF10 & 02-13807 CF10.

Andrew E. Pacheco, Sneads, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellee.

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