

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2009

THOMAS TURNER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-3220

[August 26, 2009]

PER CURIAM.

After entering a no contest plea to possession of cocaine, Thomas Turner was sentenced to three years probation. In this violation of probation proceeding, the trial court found Turner guilty of each of three charged violations of that probation and sentenced him, as a habitual felony offender (HFO), to five years incarceration. Turner insists that the evidence was insufficient to establish any of the violations and that the trial court erred in imposing an HFO sentence. We reject, without further comment, Turner's sufficiency of the evidence claim. As the State concedes, however, there is merit in the argument regarding the HFO sentence. Not only did the court's oral pronouncement of sentence fail to include an HFO designation, but the offense for which sentence was imposed was possession of cocaine, in violation of section 893.13, Florida Statutes (2003). A violation of section 893.13 cannot provide the basis for the imposition of an HFO sentence. See § 775.084(1)(a)3., Fla. Stat. (2003). We thus affirm the revocation of probation, but remand the matter, directing the trial court to correct the sentencing order by removing the HFO designation.

Affirmed in part; reversed in part; and remanded.

STEVENSON, MAY and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John J. Murphy, III, Judge; L.T. Case Nos. 03-11358

CF10A & 06-14347 CF10A.

Carey Haughwout, Public Defender, and Ellen Griffin, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.