

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

GABORUGH F. DONALDSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-3230

[September 2, 2009]

DAMOORGIAN, J.

Gaborugh F. Donaldson appeals his convictions and sentences for attempted burglary of a dwelling, possession of burglary tools, grand theft, battery on a law enforcement officer, and resisting arrest without violence. We affirm Donaldson's convictions on all five counts, but vacate his sentences and remand for resentencing before a different judge because the trial court improperly considered his protestations of innocence and lack of remorse in sentencing him.

In this case, Donaldson pled not guilty, did not testify at his trial, and maintained his innocence throughout the trial and sentencing proceedings. However, at sentencing the trial court expressly considered Donaldson's protestations of innocence and failure to show remorse in determining what sentence to impose. In so doing, the trial court violated Donaldson's due process right against self-incrimination. See *Holton v. State*, 573 So. 2d 284, 292 (Fla.1990); *St. Val v. State*, 958 So. 2d 1146, 1146-47 (Fla. 4th DCA 2007); *Gilchrist v. State*, 938 So. 2d 654, 657-58 (Fla. 4th DCA 2006).

Convictions Affirmed; Sentences Vacated and Remanded for resentencing before a different judge.

GERBER and LEVINE, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit,

Broward County; Jack B. Tuter, Judge; L.T. Case No. 06-5654 CF10B.

Jason T. Forman of Law Offices of Jason T. Forman, P.A., Fort Lauderdale, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Joseph A. Tringali, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.