

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

LEE NELSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-1966

[September 30, 2009]

STEVENSON, J.

Appellant was charged with one count of possession of cocaine and one count of possession of drug paraphernalia, and pled no contest to the charges. The circuit court accepted the plea, denied appellant's motion for alternative sentencing under Florida Statutes section 948.20 (drug offender probation) and sentenced appellant to 37.2 months in prison. The State concedes, and we agree, that the circuit court erred in failing to consider the motion for alternative sentencing for the circuit court's stated reason that appellant was "not eligible" for alternative sentencing under section 948.20 since he had prior non-felony drug convictions. In *Nelson v. State*, 34 Fla. L. Weekly D1743 (Fla. 4th DCA Aug. 26, 2009) (*Nelson I*), another case involving this same defendant, this court recently clarified that a defendant with prior non-felony convictions is eligible for alternative sentencing under section 948.20. *Id.*

As in *Nelson I*, we reverse the sentence and remand so that the circuit court may reconsider appellant's motion for alternative sentencing under the plain language of section 948.20. We emphasize that the circuit court retains the discretion to decide the merits of appellant's motion under the statute's provisions and nothing in this opinion should suggest an outcome thereof.

Reversed and remanded.

GROSS, C.J., and FARMER, J., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Marc H. Gold, Judge; L.T. Case No. 08-15715 CF10A.

Carey Haughwout, Public Defender, and Susan D. Cline, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.