

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2012*

**JUSTIN E. MAYS,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D10-4255

[May 23, 2012]

PER CURIAM.

Justin Mays appeals the summary denial of his motion for postconviction relief which was filed pursuant to Florida Rule of Criminal Procedure 3.850. Though Mays raised several issues, we reverse and remand for review of one point associated with the calculation of his scoresheet.

Mays' scoresheet reflects fourteen points for a prior offense of burglary of a dwelling. Within his sworn motion Mays alleges that the dwelling was unoccupied, and therefore it is a level four offense permitting the scoring of only 2.4 points. *See* § 921.0023, Fla. Stat. (2006).

This claim was not addressed below or in response to this court's order. Our review of the record suggests that the calculations are significant because Mays pled to the lowest permissible prison sentence. *See generally, Brooks v. State*, 969 So. 2d 238 (Fla. 2007); *State v. Anderson*, 905 So. 2d 111 (Fla. 2005); *Johnson v. State*, 976 So. 2d 698 (Fla. 2d DCA 2008). We therefore reverse and remand on this issue only. On remand, the court may attach portions of the record to conclusively refute this ground or it may conduct an evidentiary hearing.

We affirm without discussion the trial court's denial of Mays' remaining claims.

*Affirmed in part, Reversed in part, and Remanded.*

MAY, C.J., TAYLOR and GERBER, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 06-6694CF10C.

Justin E. Mays, Immokalee, pro se

Pamela Jo Bondi, Attorney General, Tallahassee, and James J. Carney, Assistant Attorney General, West Palm Beach, for appellee.

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