

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MALCOLM RANDALL BADGER,)

Appellant,)

v.)

STATE OF FLORIDA,)

Appellee.)

Case No. 2D07-1717

Opinion filed March 25, 2009.

Appeal from the Circuit Court for
Hillsborough County; Robert A. Foster, Jr.,
Judge.

James Marion Moorman, Public Defender,
and Richard P. Albertine, Jr., Assistant
Public Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and William I. Munsey, Jr.,
Assistant Attorney General, Tampa, for
Appellee.

ALTENBERND, Judge.

Malcolm Randall Badger appeals the trial court's orders revoking his probation and sentencing him to prison terms totaling fifteen years in four separate criminal cases. We affirm the orders revoking his probation and the sentences except

for three concurrent sentences imposed on Mr. Badger's third-degree felony convictions. The earlier sentences for those convictions had actually expired prior to these revocation proceedings.

Sentencing in these cases in 2007 was a challenge because two of the cases, case numbers 00-CF-17866 and 00-CF-21191, involved sentencing on a second violation of probation. The other two cases, case numbers 02-CF-535 and 02-CF-12003, involved sentencing on a first violation of probation.

The two counts in case number 00-CF-17866 had resulted in convictions for third-degree felonies in 2002, and the terms of probation for those two convictions had actually expired prior to the proceedings in 2007 as a result of credit for time served on probation prior to the first violation of probation. Count two in case number 00-CF-21191 also involved a third-degree felony, and the term of probation for that count had also expired prior to the proceedings in 2007.

Accordingly, we reverse the sentences in case number 00-CF-17866 and the sentence for count two in case number 00-CF-21191. On remand, the trial court shall vacate these sentences. Our disposition does not affect the sentences for count one in case number 00-CF-21191 or the sentences imposed in case numbers 02-CF-535 and 02-CF-12003. Thus, our disposition leaves unaffected Mr. Badger's prison terms totaling fifteen years and the five-year terms of probation to follow.

Affirmed in part, reversed in part, and remanded.

WHATLEY and KHOUZAM, JJ., Concur.