

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DANA SMITH,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D08-4380

Opinion filed May 13, 2009.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Richard A. Luce,
Judge.

FULMER, Judge.

We affirm, without comment, the order denying Dana Smith relief under Florida Rule of Criminal Procedure 3.850. However, we remand with directions for the postconviction court to correct a scrivener's error in the written sentence.

On January 16, 2007, the trial judge orally sentenced Smith to a term of 15 years, requiring the first 37.2 months to be served in prison, suspending the remaining 142.8 months, and placing Smith on probation for the suspended period. The

order of probation accurately reflects this true split sentence by requiring service of the suspended term as a condition of probation. The written sentence, however, reflects a probationary split sentence consisting of 15 years in prison followed by 142.8 months' probation, with no portion of the prison sentence suspended. The written sentence shall be corrected to reflect that a portion of the prison sentence was suspended as orally pronounced.

Affirmed, but remanded with directions.

DAVIS and KELLY, JJ., Concur.