

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ALLEN FONTEYNE,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D02-5367

Opinion filed June 13, 2003.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pasco County; William R. Webb,
Judge.

KELLY, Judge.

Allen Fonteyne challenges the summary denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Fonteyne claims that his sentence of one year of probation for reckless driving is illegal because it exceeds the statutory maximum for that offense. We agree and reverse.

Section 316.192(2)(a), Florida Statutes, provides that any person convicted of reckless driving shall be punished upon first conviction by imprisonment for a period of not more than ninety days. This court has held that a term of probation is

not to exceed the statutory maximum for incarceration. Watts v. State, 328 So. 2d 223 (Fla. 2d DCA 1976). Therefore, the probationary term could not have exceeded ninety days. Nor could Fonteyne have agreed to an illegal sentence, one that exceeds the statutory maximum term. Cheney v. State, 640 So. 2d 103 (Fla. 4th DCA 1994).

Accordingly, we vacate the sentence and remand for resentencing.

Vacated and remanded for resentencing.

SALCINES and DAVIS, JJ., Concur.