

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

ROBERT MONTGOMERY, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D11-3783

Opinion filed May 17, 2013.

Appeal from the Circuit Court for Sarasota  
County; Donna Padar Berlin, Judge.

Howard L. Dimmig, II, Public Defender, and  
Richard J. Sanders, Assistant Public  
Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Susan D. Dunlevy,  
Assistant Attorney General, Tampa, for  
Appellee.

VILLANTI, Judge.

In conducting its record review following Anders<sup>1</sup> briefing, this court agrees  
that a sentencing error occurred. After supplemental briefing, the State rightly concedes  
the error. Specifically, Montgomery pleaded no contest to both counts of the

<sup>1</sup>Anders v. California, 386 U.S. 738 (1967).

information: (1) a violation of section 827.04(3), Florida Statutes (2009), a third-degree felony; and (2) a violation of section 800.04(4)(a), Florida Statutes (2009), a second-degree felony. Because Montgomery was sentenced to 120 months in prison concurrent on both counts, his sentence on Count 1 exceeded both the statutory maximum for a third-degree felony and the minimum sentence indicated in Montgomery's Criminal Punishment Code scoresheet. See § 775.082(3)(d), Fla. Stat. (2009); Butler v. State, 838 So. 2d 554, 556 (Fla. 2003). We affirm without comment both convictions, as well as the sentence on Count 2. But we must vacate the sentence on Count 1 and remand for resentencing on that count only.

Affirmed in part; sentence vacated on Count 1; remanded for further proceedings consistent with this opinion.

DAVIS and SLEET, JJ., Concur.