

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2009

KEVIN A. JILES,

Appellant,

v.

CASE NO. 5D08-2605

STATE OF FLORIDA,

Appellee.

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Opinion filed October 2, 2009

Appeal from the Circuit Court
for Volusia County,
James Clayton, Judge.

James S. Purdy, Public Defender, and
Anne Moorman Reeves, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Ann M. Phillips,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Kevin A. Jiles appeals his convictions and sentences for burglary of a dwelling with a firearm, false imprisonment with a firearm and possession of a firearm by a convicted felon. We find no reversible error relating to Jiles' trial, and affirm the convictions without elaboration. However, we agree with Jiles that the sentencing record reflects a consideration by the court of improper sentencing factors. Specifically,

after Jiles maintained his innocence at trial and during sentencing, the judge credited a co-defendant for "accept[ing] responsibility for what he did and . . . [being] willing to take the hit for what he did without going through the process." By contrast, the judge noted that Jiles did not "accept responsibility" but "denied [his] involvement." These are improper sentencing considerations. See, e.g., *Hannum v. State*, 13 So. 3d 132, 135-36 (Fla. 2d DCA 2009) (holding trial court's improper consideration during sentencing of fact that defendant maintained his innocence at trial and at sentencing and refused to take responsibility for his actions was equivalent to a denial of due process and thus constituted fundamental error); *Bracero v. State*, 10 So. 3d 664, 665-66 (Fla. 2d DCA 2009) (holding that consideration of claim of innocence as a factor in determining sentences violated defendant's due process rights); *Soto v. State*, 874 So. 2d 1215, 1216 (Fla. 3d DCA 2004) (holding that defendant's protestation of innocence and unwillingness to admit guilt were impermissible considerations for sentencing, and that a trial court's statements indicating consideration of those factors required reversal for resentencing before another judge).

Accordingly, we reverse the sentences and remand with directions that Jiles be resentenced before a different judge.

CONVICTIONS AFFIRMED; SENTENCES REVERSED; REMANDED WITH DIRECTIONS.

LAWSON, EVANDER and COHEN, JJ., concur.