

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

JANUARY TERM 2011

MICHAEL E. OLIVE,

Appellant,

v.

Case No. 5D10-2102

STATE OF FLORIDA,

Appellee.

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Opinion filed January 28, 2011

3.800 Appeal from the Circuit
Court for Brevard County,
John M. Harris, Judge.

Michael E. Olive, Florida City, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

COHEN, J.

Appellant challenges the trial court's denial of his postconviction motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a) and its order denying his motion for rehearing. The trial court correctly denied relief on Appellant's argument that his sentence exceeded the statutory maximum. See Monroe v. State, 36 So. 3d 930 (Fla. 4th DCA 2010) (holding sentence of thirty-five years in prison with ten years' probation for second-degree murder is within the statutory maximum under 1997 statutes). Accordingly, we affirm the trial court's ruling on this ground.

The trial court erred, however, by summarily denying Appellant's claim that his sentence exceeded the sentencing guidelines in effect prior to the Criminal Punishment Code's effective date. Taking judicial notice of this court's records of Appellant's direct appeal, we conclude that Appellant has stated a facially sufficient claim for relief. Therefore, the trial court was required to attach supporting documents to its order that summarily denied his claim for relief. See Friss v. State, 881 So. 2d 38 (Fla. 5th DCA 2004).

Accordingly, we reverse and remand to the trial court to attach additional portions of the record, including the sentencing guidelines scoresheet, which conclusively refute Appellant's claim, or to resentence Appellant in accordance with the standards set forth in Brooks v. State, 969 So. 2d 238 (Fla. 2007).

AFFIRMED IN PART; REVERSED IN PART; REMANDED WITH DIRECTIONS.

MONACO, C.J., and SAWAYA, J., concur.