

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

ROBERT WILLIAMS,  
  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D07-2948

STATE OF FLORIDA,  
  
Appellee.

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Opinion filed March 25, 2008.

An appeal from the Circuit Court for Leon County.  
Kathleen F. Dekker, Judge.

Robert Williams, pro se, Appellant.

Bill McCollum, Attorney General, and Terry P. Roberts, Assistant Attorney General,  
Tallahassee, for Appellee.

PER CURIAM.

The appellant has appealed an order denying what appears to be a second rule 3.850 motion in which he raises two claims of ineffective assistance of trial counsel, one claim of prosecutorial misconduct, and one claim of an illegal sentence due to the trial court's sentencing him to a six-year split sentence of three years' imprisonment to be followed by three years' probation for third-degree felony convictions. We affirm the trial court's summary denial of the claims of ineffective assistance and

prosecutorial misconduct. However, the appellant's claim challenging the six-year split sentence appears to have merit since the statutory maximum for a third-degree felony is five years. See § 775.082(3)(d), Fla. Stat. (2004). Along with the other three claims, the trial court denied the illegal sentence claim as successive and, to support its ruling, attached a December 2006 order indicating that the appellant had raised claims of ineffective assistance of trial counsel in a previous rule 3.850 motion. The record does not indicate that the appellant had previously raised the illegal sentence claim. As such, the trial court erred in determining it was successive. Therefore, we treat the illegal sentence claim as having been filed pursuant to rule 3.800(a), see Robinson v. State, 916 So. 2d 974 (Fla. 1st DCA 2005), and remand for the trial court to address the merits of this claim. See Weeks v. State, 696 So. 2d 1319 (Fla. 1st DCA 1997).

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

BENTON, LEWIS, and ROBERTS, JJ., CONCUR.