

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

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

DARRYL LEWIS DAVIS,

Petitioner,

v.

Case No. 5D15-2507

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed July 15, 2016

Petition for Writ of Habeas
Corpus, A Case of Original
Jurisdiction.

Darryl Lewis Davis, Carrabelle, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Respondent.

PER CURIAM.

Darryl Lewis Davis petitions this court for writ of habeas corpus regarding his convictions and life sentences in two cases. Davis was charged in both cases with robbery with a firearm. Neither the informations nor the evidence presented in Davis's trials alleged that he used any weapon other than a firearm. Separate juries found Davis

guilty of robbery with a deadly weapon but made special findings that he did not possess a firearm during the commission of the crimes.

We hold that it was error to list robbery with a deadly weapon as a lesser-included offense on the verdict forms in these cases. See Growden v. State, 372 So. 2d 930, 931 (Fla. 1979); Stephens v. State, 396 So. 2d 741, 742 (Fla. 5th DCA 1981); Deleon v. State, 66 So. 3d 391, 394-95 (Fla. 2d DCA 2011). Furthermore, the verdicts and special findings were inconsistent. See Starling v. State, 152 So. 3d 868, 868 (Fla. 1st DCA 2014); Nettles v. State, 112 So. 3d 782, 783 (Fla. 1st DCA 2013). Failure to correct Davis's convictions, which resulted in consecutive life sentences, would constitute a manifest injustice.

Accordingly, we grant Davis's petitions for writ of habeas corpus and remand for entry of corrected judgments that adjudicate him guilty of robbery with a weapon and resentencing according to a revised Criminal Punishment Code scoresheet.

PETITIONS GRANTED.

SAWAYA, ORFINGER and EDWARDS, JJ., concur.