

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

JANUARY TERM 2002

JOHNATHAN SAYLOR,

Appellant,

v.

CASE NO. 5D02-435

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed May 31, 2002

**3.800 Appeal from the Circuit
Court for Putnam County,
A. W. Nichols, III, Judge.**

Johnathan Saylor, DeFuniak Springs, Pro se.

**Robert A. Butterworth, Attorney General, Tallahassee, and
Kellie A. Nielan, Assistant Attorney General,
Daytona Beach, for Appellee.**

HARRIS, J.

There appears to be more problems with this oft reviewed case, problems arising under *Heggs v. State*, 759 So. 2d 620 (Fla. 2000). It appears that Saylor's primary offense at sentencing (attempted second degree murder) should have been scored as a level 8 offense instead of a level 9. Further, the one level increase because of the use of a firearm should not apply during the *Heggs* window period. See *Salters v. State*, 758 So. 2d 667 (Fla.

2000).

We reject Saylor's *Apprendi* argument.

This matter is remanded to the trial court for resentencing and the new sentence may be any sentence which the court could have imposed at the original sentencing . See *Trotter v. State*, 801 So. 2d 1041 (Fla. 5th DCA 2001), *rev. granted*, Table No. SC02-14 (Fla. Apr. 30, 2002).

REVERSED and REMANDED for resentencing.

SHARP, W., and PALMER, JJ., concur.