

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

JANUARY TERM 2013

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

MANUEL BETANCOURT,

Appellant,

v.

Case No. 5D11-4202

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed March 28, 2013

Appeal from the Circuit Court
for Orange County,
Renee A. Roche, Judge.

James S. Purdy, Public Defender, and
Kathryn Rollison Radtke, Assistant Public
Defender, Daytona Beach, for Appellant.

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

PER CURIAM.

Manuel Betancourt pled no contest to various crimes and received a downward departure sentence based on an alleged need for specialized medical treatment. The State appealed, and this Court reversed, concluding that Betancourt failed to prove with competent, substantial evidence, that the necessary medical treatment he required

could not be provided by the Department of Corrections (“DOC”). See State v. Betancourt, 40 So. 3d 53, 57 (Fla. 5th DCA 2010). On remand, a new sentencing hearing was conducted and again, Betancourt asserted that he needed specialized medical treatment that was not available from the DOC. The trial court, properly concluding that it was bound by our earlier decision, found that Betancourt failed to demonstrate that DOC could not provide the necessary care and treatment.

While this appeal was pending, this Court receded from its numerous prior decisions and has now held that a defendant is not required to establish that the needed treatment is unavailable in DOC. See State v. Owens, 95 So. 3d 1018 (Fla. 5th DCA 2012)(en banc). Betancourt’s resentencing occurred before we decided Owens. Because the trial court did not have the benefit of our decision and originally indicated a desire to impose a downward departure sentence, we reverse Betancourt’s sentence and remand this matter for resentencing so that the court may consider our holding in Owens.

REVERSED and REMANDED.

ORFINGER, C.J., PALMER AND BERGER, JJ., concur.