

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

SAMUEL J. WHITAKER, JR.,
Appellant,

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

v.

CASE NO. 1D02-3050

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed May 12, 2005.

An appeal from the Circuit Court for Duval County.
W. Gregg McCaulie, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, Tallahassee, for Appellee.

On The Court's Own Motion

We sua sponte withdraw our pre-mandate opinion in this case and substitute the following.

PER CURIAM.

The summary denial of the appellant's postconviction motion is reversed and the cause remanded to the trial court to permit the appellant a reasonable opportunity

to demonstrate his claim is timely under Dickey v. State, 30 Fla. L. Weekly D443 (Fla. 1st DCA Feb. 15, 2005), by alleging the date his present conviction was enhanced by the challenged conviction. Cf. Nelson v. State, 875 So. 2d 579 (Fla. 2004). If no amendment is filed within the time allowed, then the denial can be with prejudice. Id.; Spooner v. State, 889 So. 2d 900, 901 (Fla. 1st DCA 2004).

REVERSED AND REMANDED.

KAHN, BENTON and LEWIS, JJ., CONCUR.