

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

JOHNNY SAMPSON,  
Appellant,

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

v.

CASE NO. 1D04-3189

STATE OF FLORIDA,  
Appellee.

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Opinion filed August 31, 2005.

An appeal from the circuit court for Leon County.  
L. Ralph Smith, Judge.

James C. Banks of Law Firm of Banks & Morris, P.A., Tallahassee, for Appellant.

Charlie Crist, Attorney General; Thomas D. Winokur, Assistant Attorney General,  
Tallahassee, for Appellee.

PER CURIAM.

In this direct criminal appeal, appellant claims that the trial court erred in resentencing him on count II on its own motion after he successfully sought postconviction relief as to his sentence on count I. The state correctly concedes that

appellant preserved this claim by objection below and that resentencing on count II was prohibited by Fasenmyer v. State, 457 So. 2d 1361 (Fla. 1984). Accord Cochran v. State, 899 So. 2d 490, 492-93 (Fla. 2d DCA 2005); Burnett v. State, 890 So. 2d 335, 337 (Fla. 2d DCA 2004); De La Cosa v. State, 784 So. 2d 452, 454-55 (Fla. 3d DCA 2000); Gordon v. State, 635 So. 2d 1017, 1018 (Fla. 1st DCA 1994). Therefore, we vacate the life sentence as an habitual felony offender imposed as to count II and remand with directions that the trial court impose the original sentence of 30-years' probation, consecutive to the prison sentence imposed as to count I.

Appellant also claims that the written judgment and sentence contains a scrivener's error in that it imposes habitual felony offender sentences as to all three counts while the trial court's oral pronouncement imposed an habitual felony offender sentence as to only count II. Although this claim is not preserved, we trust that the trial court will correct this scrivener's error on remand.

REVERSED and REMANDED for resentencing.

WEBSTER, VAN NORTWICK and LEWIS, JJ., CONCUR.