

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

FRANKLIN MURNAHAN,

Appellant,

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

v.

CASE NO. 1D05-2931

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 7, 2005.

An appeal from the Circuit Court for Duval County.
L. Page Haddock, Judge.

Appellant, pro se.

Charlie Crist, Attorney General; Sherri Tolar Rollison, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

The appellant challenges the summary denial of his post conviction motion, in which he asserts that his written judgment and sentence contain a habitual felony offender designation, but that the trial court failed to orally pronounce the imposition of a habitual felony offender sentence.

The appellant has made a facially sufficient claim for relief in a rule 3.800(a) motion. See Fitzpatrick v. State, 863 So. 2d 462 (Fla. 1st DCA 2004). Further, where there is a discrepancy between the oral and written pronouncement of the sentence, the oral pronouncement controls. Ashley v. State, 850 So. 2d 1265 (Fla. 2003); Frost v. State, 769 So. 2d 443 (Fla. 1st DCA 2000). In the instant motion, the trial court failed to attach record portions conclusively refuting the claim. The order denying the motion is therefore reversed, and the case is remanded so that the court may either attach the transcript or take such other action as may be appropriate.

REVERSED AND REMANDED.

ALLEN, BENTON, and VAN NORTWICK, JJ., CONCUR.