

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

ANTHONY HARDY,
Appellant,

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

v.

CASE NO. 1D06-3431

STATE OF FLORIDA,
Appellee.

Opinion filed May 4, 2009.

An appeal from the Circuit Court for Gadsden County.
P. Kevin Davey, Judge.

Nancy A. Daniels, Public Defender, and Kathleen Stover, Assistant Public
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Trisha Meggs Pate, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The State concedes the sentencing court erred in imposing life sentences for
appellant Anthony Hardy's convictions for attempted felony murder. The State's
concession of error is both professional and correct. A sentencing court may not
reclassify attempted felony murder, a first-degree felony, as a life felony on the

basis of the defendant's use of a firearm, when firearm use is an essential element of the underlying felony, as it was here. See Traylor v. State, 785 So. 2d 1179, 1181 (Fla. 2000). Accordingly, the case is remanded for resentencing with respect to appellant's attempted felony murder convictions.

REVERSED and REMANDED.

KAHN, THOMAS, and ROBERTS, JJ., CONCUR.