

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

JACK ALLEN,  
  
Appellant,

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

v.

CASE NO. 1D07-0689

STATE OF FLORIDA,

Appellee.

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Opinion filed June 10, 2008.

An appeal from the Circuit Court for Gadsden County.

P. Kevin Davey, Judge.

Nancy A. Daniels, Public Defender, and Edgar Lee Elzie, Jr., Assistant Public  
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and C. Bowen Robinson, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Jack Allen, appeals his conviction and sentence for sexual battery.

We affirm the conviction without further comment. However, we reverse Appellant's

sentence because the trial court erred in reclassifying the offense pursuant to section 794.023, Florida Statutes (2004). As the State concedes, it did not charge Appellant as a perpetrator under section 794.023. Therefore, reclassification was improper. See § 794.023(2), Fla. Stat. (2004) (“A violation of s. 794.011 shall be reclassified as provided in this subsection if it is charged and proven by the prosecution that, during the same criminal transaction or episode, more than one person committed an act of sexual battery on the same victim.”) (Emphasis added).

AFFIRMED in part, REVERSED in part, and REMANDED for resentencing.

ALLEN, DAVIS, and HAWKES, JJ., CONCUR.