

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

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

EUGENE V. ROSS,

Appellant,

v.

CASE NO. 1D08-4880

STATE OF FLORIDA,

Appellee.

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Opinion filed June 24, 2009.

An appeal from the Circuit Court for Duval County.  
John M. Merrett, Judge.

Appellant Eugene V. Ross, pro se.

Bill McCollum, Attorney General, and Christine A. Guard, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant filed a motion under Florida Rule of Criminal Procedure  
3.800(a), claiming that the trial court sentenced him illegally when it sentenced  
him under the 1983 sentencing guidelines, adopted by the Florida Supreme Court,

before the Florida legislature adopted them on July 1, 1984. See Smith v. State, 537 So. 2d 982 (Fla. 1989); Wright v. State, 941 So. 2d 538 (Fla. 1st DCA 2006).

Because the appellant's motion raises a facially sufficient claim that is not refuted by the record, we reverse and remand for attachment of record portions showing that the appellant's claim has been addressed on the merits, attachment of record portions showing that the appellant affirmatively elected to be sentenced under the sentencing guidelines, or resentencing.

REVERSED.

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