

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

ENRICO THOMPSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D08-6308

Opinion filed December 15, 2009.

An appeal from the Circuit Court for Duval County.

L.P. Haddock, Judge.

Nancy A. Daniels, Public Defender, and M. Gene Stephens, Assistant Public Defender, Tallahassee, for Appellant.

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

PER CURIAM.

Enrico Thompson challenges his habitual felony offender sentence arguing it is unconstitutional because a jury was not asked to find as fact that he had committed the requisite number of prior convictions so as to be subject to habitual

felony offender sentencing. This question has been settled. See, for example, Jones v. State, 791 So. 2d 580 (Fla. 1st DCA 2001); Wright v. State, 780 So. 2d 5th DCA 2001). While appellant suggests that Almendarez-Torres v. United States, 523 U.S. 224 (1998), is of questionable authority, we find no basis to find a constitutional infirmity in the procedure utilized in the instant case. See Apprendi v. New Jersey, 530 U.S. 466 (2000)(requiring a jury to find a fact used as a basis for exceeding the statutory maximum sentence except for the fact of a prior conviction). We AFFIRM.

WOLF, VAN NORTWICK, AND ROBERTS, JJ., CONCUR.