

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2007*

**MICHAEL A. PUSKAC,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D04-1077

[February 28, 2007]

***ON REMAND FROM THE FLORIDA SUPREME COURT***

PER CURIAM.

The supreme court has quashed our decision in *Puskac v. State*, 872 So.2d 1008 (Fla. 4th DCA 2004), and remanded for reconsideration. *State v. Puskac*, --- So.2d ---, 31 Fla. L. Weekly S640, 2006 WL 2827606 (Fla. Oct. 5, 2006). The court required that we review the issue under *State v. Richardson*, 915 So.2d 86 (Fla. 2005).

Puskac sought relief under rule 3.850 challenging his habitual offender sentence. Puskac claimed the trial court could not use a probation sentence as a predicate for the enhanced sentence. The trial court denied relief. In accordance with our prior rulings, and noting conflict, we reversed. *Richardson v. State*, 884 So.2d 950 (Fla. 4th DCA 2003), *supplemented on reh'g*, 884 So.2d 950 (Fla. 4th DCA 2004).

Upon review of *State v. Richardson*, 915 So.2d 86 (Fla. 2005), we now affirm the summary denial. Puskac admitted that the sole issue for review was whether a probation sentence can be a sentence for purposes of habitual offender enhancements. The supreme court clarified the conflict between districts by declaring a sentence of probation is a sentence within the meaning of the habitual offender sentencing statutes. Puskac's claim of error must be denied.

*Affirmed.*

WARNER, FARMER and TAYLOR, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Cheryl J. Aleman, Judge; L.T. Case No. 96-1129 CF10A.

Michael A. Puskac, Arcadia, pro se.

Bill McCollum, Attorney General, Tallahassee, and Melynda L. Melear, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing***