

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

**VICTOR PEEL, JR.,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D06-3119

[January 2, 2008]

PER CURIAM.

For the third degree felony of burglary of a structure, Victor Peel, Jr. was sentenced as a habitual felony offender to 10 years in prison. On a grand theft charge, he was sentenced as a habitual offender to five years consecutive to the sentence on the burglary charge. Peel filed a motion to correct sentencing error, which was considered denied because the trial court did not rule on the motion. See Fla. R. Crim. P. 3.800(b)(1)(B). This sentence is contrary to *Hale v. State*, 630 So. 2d 521 (Fla. 1993); see also *Fuller v. State*, 867 So. 2d 469 (Fla. 5th DCA 2004) (holding that under *Hale*, a non-habitual offender sentence cannot run consecutively to an habitual offender sentence that exceeded the statutory maximum for the degree of felony subject to enhanced sentencing); *Kiedrowski v. State*, 876 So.2d 692, 693 (Fla. 1st DCA 2004) (same). We remand to the circuit court for appellant to be resentenced to a five-year term concurrent with the sentence on the burglary charge.

WARNER, FARMER and GROSS, JJ., concur.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; James W. Midelis, Senior Judge; L.T. Case No. 562005CF002992B.

Carey Haughwout, Public Defender, and Marcy K. Allen, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

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