

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

LARRY BENJAMIN,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

No. 4D07-3249

[April 16, 2008]

PER CURIAM.

Larry Benjamin filed a petition alleging ineffective assistance of appellate counsel. Benjamin claims that counsel failed to raise, on appeal, that his convictions for lewd or lascivious molestation and lewd or lascivious conduct violated double jeopardy. *State v. Paul*, 934 So. 2d 1167 (Fla. 2006); *see also Capron v. State*, 948 So. 2d 954 (Fla. 5th DCA 2007). We grant relief as the responses filed in this court do not refute his claim that the outcome of the appeal would have been different.

Accordingly, this opinion shall be filed with the lower tribunal and treated as the notice of appeal of the judgment and sentence entered in this case. Upon receipt, the clerk of the lower court shall certify a copy of this opinion to this court in accordance with Florida Rule of Appellate Procedure 9.040(g). The appeal shall proceed under a new case number, which shall be assigned upon receipt in this court of the certified opinion. All time requirements of the Florida Rules of Appellate Procedure shall run from the date of this opinion. If Benjamin qualifies for appointed counsel, the trial court shall appoint counsel to represent him on appeal.

SHAHOOD, C.J., TAYLOR and HAZOURI, JJ., concur.

* * *

Petition alleging ineffective assistance of counsel to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Charles Greene, Judge; L.T. Case No. 05-5159 CF10A.

Larry Benjamin, Jasper, pro se.

Bill McCollum, Attorney General, Tallahassee, Myra J. Fried and Joseph A. Tringali, Assistant Attorneys General, West Palm Beach, for respondent.

Not final until disposition of timely filed motion for rehearing