

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2009

JERMAINE ATTERBURY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-4167

[April 1, 2009]

ON MOTION TO ENFORCE MANDATE

PER CURIAM.

The appellant has moved to enforce the mandate of this court. In reversing appellant's habitual felony offender sentence as illegal, we gave the state a choice on remand: "either agree to the correction of the sentence by removing the habitual offender designation on his current sentences, or the state can proceed to trial on all of the charges." *Atterbury v. State*, 991 So. 2d 980, 982 (Fla. 4th DCA 2008). Because the state failed to bring the appellant to trial within ninety days of the issuance of the mandate in accordance with Florida Rule of Criminal Procedure 3.191(m), we now order the trial court to enter an order striking the habitual offender designation on appellant's current sentences in case numbers 04-12596 CF10A and 04-14123 CF10A. A copy of the order complying with this opinion shall be filed with this court.

GROSS, C.J., WARNER and FARMER, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case Nos. 04-12596 CF10A and 04-14123 CF10A.

Howard Finkelstein, Public Defender and Joseph R. Chloupek, Assistant Public Defender, Fort Lauderdale, and Jermaine Atterbury,

Belle Glade, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.