

# Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed April 6, 2011.

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No. 3D09-1984  
Lower Tribunal No. 08-29639

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**Alejandro Balladares,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Orlando Prescott,  
Judge.

Joseph P. George, Jr., Criminal Conflict and Civil Regional Counsel, Third  
Region, and Abe A. Bailey and Dan Hallenberg, Assistant Regional Counsels, for  
appellant.

Pamela Jo Bondi, Attorney General, and Lunar Claire Alvey, Assistant  
Attorney General, for appellee.

Before SHEPHERD and EMAS, JJ., and SCHWARTZ, Senior Judge.

CONFESSION OF ERROR

SCHWARTZ, Senior Judge.

While defendant's convictions are affirmed, the defendant argues, the State concedes, and we agree, that the concurrent sentences imposed below upon him as a (properly designated) Prison Releasee Reoffender, § 775.082, Fla. Stat. (2008), of thirty years for strong arm robbery, a second degree felony, and ten years for tampering with a witness, a third degree felony, are unlawfully excessive. The trial court's apparent reliance on the habitual felony offender statute which would permit this sentence, § 775.084, Fla. Stat. (2008), was, as all agree, unjustified because, although the defendant may have qualified for that status, the trial court did not so declare him or otherwise comply with the requirements of the statute.

Therefore the sentences are vacated and the cause remanded for resentencing without regard to the habitual felony offender statute.

Affirmed in part, vacated in part, and remanded.