

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2005

THE STATE OF FLORIDA,

**

Appellant,

**

vs.

** CASE NO. 3D04-2088

DAVID CLARK,

**

Appellee.

** LOWER TRIBUNAL
CASE NO. F04-355
**

Opinion filed October 5, 2005.

An Appeal from the Circuit Court for Miami-Dade County,
Rosa Rodriguez, Judge.

Charles J. Crist, Jr. Attorney General, and Lucretia A.
Pitts, Assistant Attorney General, for appellant.

Bennett H. Brummer, Public Defender, and Valerie Jonas,
Assistant Public Defender, for appellee.

Before FLETCHER, WELLS, and CORTIÑAS, JJ.

PER CURIAM.

The State appeals the trial court's downward departure from
the sentencing guidelines, arguing that the trial court gave no

written or oral reasons for the departure.¹ Our search of the record reveals no written or oral reason for the downward departure. Accordingly we conclude that the departure is reversible error. Banks v. State, 732 So. 2d 1065 (Fla. 1999).

Accordingly Clark's sentence is reversed and the cause is remanded to present Clark with the opportunity to withdraw his plea.

Reversed and remanded.

¹ The State had, in fact, filed its intention to seek an enhanced penalty as an habitual felony offender.