

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2010

JOSEPH DIAZ,

Appellant,

v.

Case No. 5D09-2946

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 3, 2010

Appeal from the Circuit Court for
Osceola County, Scott Polodna, Judge.

James S. Purdy, Public Defender, and
Anne Moorman Reeves, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee and Ann M. Phillips, Assistant
Attorney General, Daytona Beach, for
Appellee.

PER CURIAM.

We find no reversible error in this Anders¹ appeal. There is, however, a minor error relating to the classification of the Defendant's conviction which was referenced in the Anders brief filed on appeal.² After a full and independent review of the record, we affirm the Defendant's conviction and sentence but remand to the trial court to correct the Defendant's judgment of conviction to reflect that the Defendant's conviction for

¹ Anders v. California, 386 U.S. 738 (1967).

² This issue was raised in a Florida Rule of Criminal Procedure 3.800(b) motion. However, the trial court did not timely rule on this motion and it is deemed denied.

burglary of a dwelling with an assault or battery (with a firearm) is a first-degree felony punishable by life rather than a life felony. The jury specifically found that the Defendant did not personally possess, carry, display, use or threaten to use a firearm at the time he committed the felony. Therefore, the degree of the crime could not be reclassified as a life felony. This correction does not affect the validity of the conviction or the sentence imposed.

Remand for correction; otherwise AFFIRMED.

MONACO, C.J., GRIFFIN and TORPY, JJ., concur.