

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

JASON EUGENE FOUNTAINE,
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

v.

CASE NO. 1D01-3559

STATE OF FLORIDA,

Appellee.

Opinion filed March 10, 1005.

An appeal from the circuit court for Baker County.
George H. Pierce, Judge.

Nancy A. Daniels, Public Defender; Paula S. Saunders, Assistant Public Defender,
Tallahassee, for Appellant.

Charlie Crist, Attorney General; Sherri T. Rollison, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

Convicted of first-degree murder and armed robbery with a firearm, appellant
appeals. We affirm both convictions. However, we must vacate the mandatory life

sentence imposed pursuant to section 775.087(2)(a)(3), Florida Statutes (1999), for the armed robbery conviction and remand for resentencing because the indictment did not charge, and the jury did not find, that a firearm was discharged resulting in death or great bodily harm. See, e.g., Jackson v. State, 852 So. 2d 941 (Fla. 4th DCA 2003), review denied, 869 So. 2d 540 (Fla. 2004).

AFFIRMED IN PART; REVERSED IN PART; and REMANDED, with directions.

WEBSTER, BENTON and POLSTON, JJ., CONCUR.