

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

BYRON O. BAKER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D01-4347

Opinion filed May 16, 2005.

An appeal from the Circuit Court for Duval County.
Peter L. Dearing, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, Tallahassee, for Appellee.

On The Court's Own Motion

We sua sponte withdraw our pre-mandate opinion in this case and substitute
the following.

PER CURIAM.

The summary denial of the appellant's postconviction motion is reversed
and the cause remanded to the trial court to permit the appellant a reasonable

opportunity to demonstrate his claim is timely under Dickey v. State, 30 Fla. L. Weekly D443 (Fla. 1st DCA Feb. 15, 2005), by alleging the date his present conviction was enhanced by the challenged conviction. Cf. Nelson v. State, 875 So. 2d 579 (Fla. 2004). If no amendment is filed within the time allowed, then the denial can be with prejudice. Id.; Spooner v. State, 889 So. 2d 900, 901 (Fla. 1st DCA 2004).

REVERSED AND REMANDED.

KAHN, WEBSTER, and HAWKES, JJ., concur.