

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

WARREN MARSHALL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO.: 1D01-4655

Opinion filed May 4, 2004.

An appeal from the Circuit Court for Leon County
Kathleen F. Dekker, Judge.

Nancy A. Daniels, Public Defender and Jamie Spivey, Assistant Public Defender,
Tallahassee.

Charles J. Crist, Jr., Attorney General and Karen M. Holland, Assistant Attorney
General, Tallahassee.

VAN NORTWICK, J.

On June 18, 2003, this court relinquished jurisdiction in this appeal to allow the trial court to consider appellant's motion to correct his sentence. In a motion filed pursuant to rule 3.800(b)(2), Florida Rules of Criminal Procedure, appellant then

argued that his sentence under the Prison Releasee Re-offender Act, section 775.082(8)(a)(1)(q), Florida Statutes, was illegal because such sentencing was not applicable to the offense of burglary of a structure or dwelling at the time appellant's offense was committed in 2000. See State v. Huggins, 802 So. 2d 276 (Fla. 2001), and Weems v. State, 795 So. 2d 122 (Fla. 1st DCA 2001). The trial court denied appellant's motion as untimely. The trial court erred in finding the motion untimely and, on remand, the trial court is instructed to consider the issue of whether appellant's sentence for count I, burglary of a dwelling or structure, is violative of Huggins and its progeny and to enter a corrected sentence if required. Appellant need not be present for resentencing.

REVERSED and REMANDED.

KAHN AND BROWNING, JJ., CONCUR.