

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

NICKALIST MARES LANG,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D05-3697

---

Opinion filed November 8, 2006.

An appeal from the Circuit Court for Jackson County.  
Hentz McClellan, Judge.

Nancy A. Daniels, Public Defender, and John B. Kelly, III, Assistant Public Defender,  
Tallahassee, for Appellant.

Charlie Crist, Attorney General, and Felicia A. Wilcox, Assistant Attorney General,  
Tallahassee, for Appellee.

PER CURIAM.

Appellant's conviction for possession of a firearm by convicted felon and the overall sentence imposed are affirmed. However, because appellant was not charged with or proven to have been in actual possession of the firearm - - as required by

section 775.087(4), Florida Statutes (2005) - - we reverse the three-year mandatory minimum sentence imposed pursuant to that statute, and remand with directions to strike that portion of the sentence. See Cook v. State, 816 So. 2d 267 (Fla. 1st DCA 2002). Appellant need not be present for resentencing. See Irons v. State, 851 So. 2d 798 (Fla. 2d DCA 2004).

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

BROWNING, C.J., DAVIS, and LEWIS, JJ., CONCUR.