

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

EDWARD BERNARD ALLEN,

Appellant,

v.

CASE NO. 1D07-4744

STATE OF FLORIDA,

Appellee.

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Opinion filed June 24, 2008.

An appeal from the Circuit Court for Alachua County.
Peter K. Sieg, Judge.

Edward Bernard Allen, pro se, Appellant.

Bill McCollum, Attorney General, and Heather Flanagan Ross, Assistant Attorney
General, Tallahassee, for Appellee.

ON MOTION FOR REHEARING

PER CURIAM.

We grant appellant's motion for rehearing, withdraw our opinion filed March
28, 2008, and issue this corrected opinion in its stead.

The appellant appeals the trial court's denial of his motion filed pursuant to
Florida Rule of Criminal Procedure 3.850. The second claim, that he was not properly

charged by the state, is conclusively refuted by the record, and we affirm the trial court's denial of this claim. The appellant also argues that his two five-year sentences imposed for two convictions of battery on a law enforcement officer may not be enhanced by sentencing him as a prison releasee reoffender ("PRR") because the offenses do not constitute forcible felonies. The appellant's claim has merit. See State v. Hearns, 961 So. 2d 211 (Fla. 2007); Witt v. State, 387 So. 2d 922 (Fla. 1980) (changes that place beyond the authority of the state the power to impose certain penalties are to apply retroactively); Johns v. State, 971 So. 2d 271 (Fla. 1st DCA 2008). We therefore reverse and remand for resentencing.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

BENTON, LEWIS, and ROBERTS, JJ., CONCUR.