

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

JOE PLAIN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-434

[June 25, 2014]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Dan Vaughn, Judge; L.T. Case No. 561997CF002302A.

Joe Plain, Okeechobee, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Angela E. Noble, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We reverse the trial court's denial of appellant's motion to correct an illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a). Appellant committed his burglary offense in 1997 before the legislature superseded the holding of *State v. Huggins*, 802 So. 2d 276 (Fla. 2001). See *Shiflet v. State*, 50 So. 3d 1153 (Fla. 4th DCA 2010). The jury made no finding that the dwelling was occupied, and the jury's failure to make that finding was not harmless under the circumstances of this case. Appellant has demonstrated that his mandatory life sentence as a prison release reoffender for burglary of a dwelling with an assault or battery is illegal. *Suffield v. State*, 132 So. 3d 333, 333 (Fla. 4th DCA 2014); *Tumblin v. State*, 965 So. 2d 354, 356 (Fla. 4th DCA 2007). We remand for resentencing.

Reversed and Remanded for Resentencing.

DAMOORGIAN, C.J., MAY and FORST, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.