

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

JANUARY TERM 2005

**WILLIE L. HAMILTON,**

Appellant,

v.

**STATE OF FLORIDA,**

Appellee.

Reversed and remanded for resentencing on  
Count II.

GUNTHER, KLEIN and STEVENSON, JJ.,  
concur.

*NOT FINAL UNTIL DISPOSITION OF ANY  
TIMELY FILED MOTION FOR REHEARING.*

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CASE NO. 4D04-4216

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Opinion filed January 19, 2005

Appeal of order denying rule 3.800(a) motion  
from the Circuit Court for the Fifteenth Judicial  
Circuit, Palm Beach County; Stephen A. Rapp,  
Judge; L.T. Case No. 98-12036 CFA02.

Willie L. Hamilton, Punta Gorda, pro se.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Don M. Rogers, Assistant  
Attorney General, West Palm Beach, for  
appellee..

PER CURIAM.

We reverse the trial court's summary denial of  
appellant's motion to correct illegal sentence  
filed pursuant to Florida Rule of Criminal  
Procedure 3.800(a). The trial court erred in  
rejecting appellant's claim that his sentence to  
30 years in prison for attempted robbery with a  
firearm was illegal because that offense is a  
second degree felony. *See e.g. Bailey v. State*,  
877 So. 2d 836 (Fla. 4th DCA 2004); *Cadet v.*  
*State*, 816 So. 2d 1202 (Fla. 4th DCA 2002).  
Apparently the trial court had relied on a State  
response which had erroneously represented that  
the offense was a first degree felony. The State  
concedes in its response filed in this Court the  
need for remand for resentencing on Count II,  
the subject of appellant's 3.800(a) motion.