

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2009

ERIC ACOSTA a/k/a **RUIZ ACOSTA** a/k/a **JOSE RODRIGUEZ,**
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D04-4307

[June 10, 2009]

ON MOTION FOR REHEARING

PER CURIAM.

We grant the state's motion for rehearing. In so holding, we withdraw our original opinion and affirm Acosta's sentence as a prison releasee reoffender. After the supreme court granted review based upon our reliance on *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006), *disapproved in part*, 993 So. 2d 952 (Fla. 2008), it quashed our decision in *Acosta v. State*, 34 Fla. L. Weekly S293 (Fla. Mar. 19, 2009), and remanded for reconsideration upon application of *Yisrael*.

In *Yisrael*, the court disapproved of this Court's holding in *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006), which was the case relied upon by this Court in holding that a Department of Corrections release-date letter, alone, was sufficient evidence to sentence Acosta as a prison releasee reoffender. *See Acosta*, 956 So. 2d 1235, 1235 (Fla. 4th DCA 2007). Although the court in *Yisrael* held that a DOC release-date letter, alone, is not admissible because, by itself and without sufficient corroboration, it fails to meet the business records hearsay exception, *see Yisrael*, 993 So. 2d at 955-59, it did hold that a DOC release date letter is admissible at sentencing under the public record hearsay exception if the following conditions are met:

- (1) the State submitted the release-date letter and the Crime and Time Report as *one combined record* during Yisrael's sentencing proceeding; (2) the release-date letter certified Yisrael's former name, offense identification numbers, and

release date; (3) the attached Crime and Time Report contained this *same information*; and (4) the DOC records custodian *signed the letter*, which was *written under seal*.

Id. at 960 (emphasis in original).

In this case, the sentencing of Acosta as a prison release reoffender was proper because, in submitting the DOC release-date letter, the State met the requirements of the public record hearsay exception articulated in *Yisrael*. Therefore, as in our recent decision in *Graham v. State*, No. 4D05-4893 (Fla. 4th DCA May 27, 2009), we affirm the trial court's sentence.

WARNER, HAZOURI and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jorge Labarga, Judge; L.T. Case Nos. 02-10201 CFA02, 02-14603 CFA02 & 02-14604 CFA02.

Carey Haughwout, Public Defender, and Susan D. Cline, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Don M. Rogers, Assistant Attorney General, West Palm Beach, for appellee.