

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

ANGEL RIVERA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-1491

[May 20, 2009]

ON REMAND FROM THE SUPREME COURT OF FLORIDA

PER CURIAM.

We reconsider on remand our opinion in *Rivera v. State*, 939 So. 2d 1197 (Fla. 4th DCA 2006), which was quashed by the Florida Supreme Court following its decision in *Rivera v. State*, 34 Fla. L. Weekly S292 (Fla. Mar. 27, 2009). As ordered by the Supreme Court, we apply its decision in *Yisrael v. State*, 993 So. 2d 952 (Fla. 2008), to the facts of this case.

In *Yisrael*, the Supreme 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 the Department of Correction's letter, alone, was sufficient evidence of Rivera's last release date to sentence him as a habitual felony offender (HFO). *See Rivera*, 939 So. 2d at 1197. Given the Supreme Court's reasoning in *Yisrael*, we now reverse Rivera's sentence as a HFO because a Department of Correction's letter, alone, is insufficient to support sentencing as a HFO. *See Yisrael*, 993 So. 2d at 961. We, therefore, remand for resentencing consistent with the supreme court's decision in *Yisrael*. Upon remand, the State may present additional evidence to prove that the defendant qualifies for habitual felony offender sentencing. *See State v. Collins*, 985 So. 2d 985, 990 (Fla. 2008).

Reversed and Remanded.

HAZOURI, MAY and DAMOORGIAN, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Ana I. Gardiner , Judge; L.T. Case No. 00-04939 CF10A

Carey Haughwout, Public Defender, and Paul E. Petillo, Assistant
Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Monique E.
L'Italien, Assistant Attorney General, West Palm Beach, for appellee.