

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2012*

**PHARAOH NSHAKA,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

Nos. 4D09-2109, 4D09-2110  
and 4D09-2111

[May 23, 2012]

**ON MOTION FOR REHEARING**

POLEN, J.

Appellant, Pharaoh Nshaka, moved this court for a rehearing after this court remanded his case for retrial due to an erroneous jury instruction and the admission of improper evidence. We deny Nshaka's motion for rehearing, but issue this supplemental opinion on the issue of resentencing.

In his motion for rehearing, Nshaka argued that because his convictions were reversed by our decision to remand the case for retrial, the sentences imposed by the trial court should have been set aside. We agree. In *Benitez v. State*, 901 So. 2d 935 (Fla. 4th DCA 2005), this court remanded a case "to vacate [the] conviction and resentence the defendant." *Id.* at 937. If the record conclusively demonstrated that the same sentences would be imposed on retrial, Nshaka would not be entitled to resentencing. See *Jones v. State*, 901 So. 2d 255, 257 (Fla. 4th DCA 2005). However, the record does not indicate as such, and as a result, Nshaka's original sentence must be vacated and the trial court should resentence him on retrial if he is found guilty.

We deny the motion for rehearing, but direct the trial court to resentence Nshaka in accordance with the outcome of the retrial.

*Rehearing Denied; Remanded with Directions.*

TAYLOR and HAZOURI, JJ., concur.

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Consolidated appeals from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin J. Bidwill, Judge; L.T. Case Nos. 06-17651 CF10A, 06-20549 CF10A and 06-15643 CF10A.

Carey Haughwout, Public Defender, and Tom Wm. Odom, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Heidi L. Bettendorf, Assistant Attorney General, West Palm Beach, for appellee.