

IN THE DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

MATTHEW CHRISTOPHER, )  
 )  
 Appellant, )  
 )  
 v. ) Case No. 2D00-5296  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

BY ORDER OF THE COURT:

Appellant's motion for rehearing is granted. The opinion issued on May 8, 2002, is withdrawn and the attached opinion is substituted. Appellant's motion for rehearing en banc is denied.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

James Birkhold  
Clerk

cc: Anthony C. Musto  
Katherine Coombs Cline

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

MATTHEW CHRISTOPHER,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D00-5296
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed August 2, 2002.

Appeal from the Circuit Court for Pinellas  
County; Mark I. Shames, Judge.

James Marion Moorman, Public Defender,  
and Anthony C. Musto, Assistant Public  
Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General,  
Tallahassee, and Katherine Coombs Cline,  
Assistant Attorney General, Tampa, for  
Appellee.

NORTHCUTT, Judge.

Matthew Christopher challenges his conviction and sentence for burglary  
of a dwelling. We affirm the conviction without comment. We agree with Christopher's  
assertion that he should not have been sentenced under the Prison Releasee

Reoffender Punishment Act (PRRPA), section 775.082(9)(a)(1)(q), Florida Statutes (2000). The information filed against Christopher charged that he burglarized a dwelling. It did not specify that the dwelling was occupied, nor did the jury make a factual determination that the dwelling was occupied when Christopher committed his offense. Under these circumstances, his offense did not qualify for PRRPA sentencing. Weems v. State, 795 So. 2d 122, 125 (Fla. 1st DCA 2001). See also Dudley v. State, 802 So. 2d 461, 462 (Fla. 2d DCA 2001); Parker v. State, 799 So. 2d 282, 283 (Fla. 2d DCA 2001).

Affirmed in part; reversed in part and remanded for resentencing.

SALCINES and KELLY, JJ., Concur.