

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TYRONE O'NEAL,)	
)	
Appellant,)	
)	
v.)	Case No. 2D01-3948
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed January 31, 2003.

Appeal from the Circuit Court
for Pinellas County;
Richard A. Luce, Judge.

James Marion Moorman, Public
Defender, and Megan Olson,
Assistant Public Defender, Bartow,
for Appellant.

Charlie Crist, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa,
for Appellee.

KELLY, Judge.

Tyrone O'Neal appeals from the habitual offender sentences imposed upon him for sale of cocaine and possession of cocaine. He argues that the trial court failed to orally announce that he was being sentenced as a habitual offender. We affirm

O'Neal's habitual offender sentence for sale of cocaine because it is obvious from the trial court's oral pronouncement of sentence that the court intended to sentence O'Neal as a habitual offender. The court discussed O'Neal's prior record and found that he met the qualifications to be sentenced as a habitual offender. As the Fifth District stated in Yates v. State, 823 So. 2d 273, 274 (Fla. 5th DCA 2002), a sentencing judge is not required "to use the magic words, 'habitual felony offender sentence,' in order to effectuate a legal sentence where it is obvious the trial court intended to and did impose an habitual felony offender sentence."

However, as O'Neal argues and the State concedes, O'Neal's written judgment erroneously reflects a habitual offender sentence for possession of cocaine. See Tyler v. State, 826 So. 2d 1103 (Fla. 2d DCA 2002). Consequently, we remand to the trial court to strike from the written sentencing order the habitual offender sanction for possession of cocaine. O'Neal's presence is not required for this ministerial function.

Affirmed in part; reversed in part and remanded.

CASANUEVA and SALCINES, JJ., Concur.