

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JOHN LOUIS DUBALSKI,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D01-4558
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____)	)	

Opinion filed December 19, 2001.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Hillsborough County; Jack Espinosa, Jr.,  
Judge.

BLUE, Chief Judge.

John Dubalski challenges the order of the trial court denying his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm, without comment, the denial of the single claim raised in Dubalski's motion. However, we remand to the trial court with directions to strike the twenty-five-year minimum mandatory.

Dubalski was convicted of second-degree murder with a firearm, a first-degree felony punishable by life. § 782.04(2), Fla. Stat. (1987). The trial court departed

from the guidelines and sentenced Dubalski to life imprisonment. The written sentence indicates that Dubalski is to serve life imprisonment with no possibility of parole for twenty-five years. Under the statute in effect at the time, where a person is convicted of a capital felony and the death sentence is not imposed, the trial court must impose a sentence of life imprisonment with a twenty-five-year minimum mandatory. § 775.082(1), Fla. Stat. (1987). However, there is no statutory authority to support the imposition of a twenty-five-year minimum mandatory where a person has been convicted of a first-degree felony punishable by life. § 775.082(3)(b), Fla. Stat. (1987). Accordingly, we remand to the trial court to strike that portion of Dubalski's sentence that states he is to have no possibility of parole for twenty-five years.

Remanded with instructions.

ALTENBERND and NORTHCUTT, JJ., Concur.