

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

ALBERT STEVEN COLEMAN, )  
 )  
 Appellant, )  
 )  
 v. ) Case No. 2D05-637  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Opinion filed May 10, 2006.

Appeal from the Circuit Court for  
Hillsborough County; Debra Behnke,  
Judge.

James Marion Moorman, Public Defender,  
and Richard P. Albertine, Assistant Public  
Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Tiffany Gatesh Fearing,  
Assistant Attorney General, Tampa, for  
Appellee.

THREADGILL, EDWARD F., Senior Judge.

Albert Steven Coleman challenges his judgments and sentences for one  
count of delivery of cocaine, two counts of possession of cocaine, and one count of

possession of drug paraphernalia. We affirm his convictions. However, we reverse his habitual felony offender sentences on the two counts of possession of cocaine.

Section 775.084(1)(a)(3), Florida Statutes (2003), precludes sentencing a defendant as a habitual felony offender for violating section 893.13 relating to purchase or possession of a controlled substance. See Virgil v. State, 884 So. 2d 373, 373-74 (Fla. 2d DCA 2004). Mr. Coleman apprised the trial court of the sentencing error in a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). The trial court did not rule on the motion within sixty days; therefore, the motion is deemed denied. See Fla. R. Crim. P. 3.800(b)(1)(B) and (b)(2)(B); O'Neill v. State, 841 So. 2d 629 (Fla. 2d DCA 2003).

Affirmed in part; reversed in part, and remanded for resentencing on the two possession of cocaine counts.

SALCINES and LaROSE, JJ., Concur.