

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

NATHAN MACK,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D02-2290

Opinion filed August 16, 2002.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Pinellas County;
Richard A. Luce, Judge.

BLUE, Chief Judge.

Nathan Mack challenges the order of the trial court entered after this court remanded to the trial court to determine the legality of Mack's habitual offender sentence on his kidnapping conviction. See Mack v. State, 814 So. 2d 1107 (Fla. 2d DCA 2002). The trial court correctly determined that the jury found Mack guilty of

kidnapping with a firearm; that it was required to enhance the kidnapping conviction from a first-degree felony to a life felony pursuant to section 775.087(2), Florida Statutes (1989); and that a life felony was not subject to habitual offender sentencing under the 1989 habitual offender statute. See id. We therefore affirm that portion of the order striking Mack's habitual offender designation on the armed kidnapping conviction but reverse the life sentence and remand with instructions to the trial court to resentence Mack within the sentencing guidelines on that count only. See Collins v. State, 800 So. 2d 660 (Fla. 2d DCA 2001).

Affirmed in part, reversed in part, and remanded for further proceedings.

SALCINES, J., Concurs.

ALTENBERND, J., Concurs with opinion.

ALTENBERND, Judge, Concurring.

I reluctantly concur in this opinion. I have come to believe that a prisoner filing a motion to correct an illegal sentence should be required to allege under oath that the sentencing error is actually harmful in some significant fashion.

Mr. Mack's sentence for this kidnapping conviction is incorrect. This sentence, however, is one of six that he received in case number 89-12882. The other sentences are apparently correct and legal sentences. Excluding the kidnapping offense, those sentences total two periods of life, plus forty years. The Department of

Corrections public records reflect that Mr. Mack is currently serving prison time for seventeen offenses in addition to those involved in case number 89-12882.

Eventually, Mr. Mack will receive a correct sentence for this kidnapping offense. This correct sentence will come at considerable judicial expense. This correction, however, will not reduce Mr. Mack's time in prison by even one nanosecond.

Courts tend to review prisoner writs on a first-in, first-out basis. As a result, Mr. Mack's lawsuit, and others like it, force prisoners who are entitled to meaningful relief to wait in prison while the courts sort through the earlier claims of prisoners who are not, and never will be, harmed by technical sentencing errors. We should change the pleading requirements in these cases to increase the odds that prisoners with genuine claims have a chance to receive relief before their sentences are fully served.