

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM, A.D. 2001

ORLANDO LUIS MORALES,

\*\*

Appellant,

\*\*

vs.

\*\* CASE NOS. 3D00-993,  
3D01-509

THE STATE OF FLORIDA,

\*\* LOWER  
TRIBUNAL NO. 99-23447

Appellee.

\*\*

Opinion filed September 26, 2001.

An Appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Miami-Dade County, Dennis J. Murphy, Judge.

Bennett H. Brummer, Public Defender and Harvey Sepler, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Fredericka Sands, Assistant Attorney General, for appellee.

Before JORGENSON, GODERICH and SORONDO, JJ.

PER CURIAM.

Orlando Luis Morales, defendant, appeals the summary denial of his Motion to Correct Illegal Sentence. The defendant was convicted for possession of cocaine, a third degree felony, and sale of cocaine within 1000 feet of a school, a first degree felony. The trial court sentenced defendant to ten years imprisonment on each count. The sentences were run concurrent to one another.

Defendant argues, and the state concedes, that the ten year

sanction for count 1, a third degree felony, exceeds the five year statutory maximum. § 775.082(3)(d), Fla. Stat. (1999). We agree. Accordingly, the sentencing order for count 1 is reversed. This cause is remanded for the imposition of a five year state prison sentence on count 1 of the Information. Defendant need not be present for resentencing. The decision of the lower court is affirmed in all other respects.

Affirmed in part, reversed in part, and remanded for resentencing on count 1.