

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2002

KEVIN MCPHEE, a/k/a
DONTE RAMON LAWS,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

**

** CASE NO. 3D01-1921

**

**

LOWER TRIBUNAL

** CASE NO. 93-10891

**

Opinion filed June 26, 2002.

An appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit
Court of Dade County, Pedro P. Echarte, Jr., Judge.

Kevin McPhee a/k/a Donte Ramon Laws, in proper person.

Robert A. Butterworth, Attorney General, for appellee.

Before LEVY, GREEN, and FLETCHER, JJ.

ON MOTION FOR REHEARING

PER CURIAM.

Kevin McPhee, a/k/a Donte Ramon Laws, moves to recall the
opinion or set aside this court's mandate in case number 3D01-
1921, wherein this court affirmed the trial court's order denying

relief and certified the matter to the Florida Supreme Court as we did in Major v. State, 790 So. 2d 388 (Fla. 3d DCA 1997). We grant McPhee's motion, set aside the mandate, recall our previously issued opinion and replace it with the following:

As this court recently explained in Cifuentes v. State, 2002 WL 985359 (Fla. 3d DCA May 15, 2002):

"The recent supreme court decision in Major v. State, 27 Fla. L. Weekly S269 (Fla. March 28, 2002) left undecided whether affirmative misadvice by counsel, as alleged in Cifuentes' motion, could form the basis for withdrawing a guilty plea. There is a conflict in the districts on this issue. The Fourth District has held that such an allegation could form the basis for relief. See Jones v. State, 26 Fla. L. Weekly D2685 (Fla. 4th DCA Nov. 14, 2001); Smith v. State, 784 So. 2d 460 (Fla. 4th DCA 2000). The Second District disagrees. See Horne v. State, 792 So. 2d 581, 582 (Fla. 2d DCA 2001), certifying conflict with Smith. We have aligned ourselves with the Second District in that when counsel misinforms his client of the potential sentence-enhancing consequences of his plea, it is a collateral consequence which does not render a plea involuntary. See Scott v. State, 27 Fla. L. Weekly D817 (Fla. 3d DCA April 10, 2002)."

As McPhee here alleges affirmative misadvice of counsel, following Cifuentes we affirm and certify conflict with Smith v. State, 784 So. 2d 460 (Fla. 4th DCA 2000).

Affirmed; conflict certified.