

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

RUBEN GUEVARRA,

**

Appellant,

**

vs.

**

CASE NO. 3D01-2262

THE STATE OF FLORIDA,

**

LOWER

Appellee.

**

TRIBUNAL NO. 99-34619

Opinion filed October 24, 2001.

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

Ruben Guevarra, in proper person.

Robert A. Butterworth, Attorney General, and John Barker, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and FLETCHER and SORONDO, JJ.

CONFESSION OF ERROR

PER CURIAM.

We reverse the summary denial of defendant's motion for post-conviction relief upon the state's confession that defendant's plea, although voluntary, was not intelligently entered because he did not receive an explanation of the possibility and consequences of being sentenced as a habitual offender before accepting the plea. Furthermore, the state concedes that the defendant does not qualify as a habitual offender. Accordingly, we remand with directions to re-sentence defendant under the sentencing

guidelines, or permit him, if he chooses, to withdraw his plea.

Reversed and remanded with instructions.