

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

KEITH L. SMITH,	**	
Appellant,	**	
vs.	**	CASE NO. 3D01-567
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 96-30706

Opinion filed August 22, 2001.

An appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Dade County, Leon M. Firtel, Judge.

Keith L. Smith, in proper person.

Robert A. Butterworth, Attorney General, and Darien M. Doe, Assistant Attorney General, for appellee.

Before COPE and GERSTEN, JJ., and NESBITT, Senior Judge.

PER CURIAM.

Keith L. Smith was sentenced as a violent career criminal. The statute was held unconstitutional for the time period relevant to the defendant's crime date. See *Salters v. State*,

758 So. 2d 667 (Fla. 2000).

Defendant-appellant Smith filed a motion for postconviction relief which the trial court granted. The court resentenced the defendant as a habitual offender. Neither the defendant nor counsel was present for the resentencing.

On this appeal, the State concedes that the defendant was entitled to be present at the resentencing. Taylor v. State, 745 So. 2d 341 (Fla. 3d DCA 1999). Upon that concession, we reverse the order now under review and remand for a new sentencing hearing.

Reversed and remanded for resentencing.