

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. 2004

ALLEN E. FLOYD,  
a/k/a THERRON FLOYD,

\*\*

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Appellant,

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CASE NO. 3D03-1847

vs.

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THE STATE OF FLORIDA,

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LOWER TRIBUNAL

CASE NO[S]. 97-15455

Appellee.

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Opinion filed February 18, 2004.

An Appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit  
Court of Miami-Dade County, Jacqueline Hogan Scola, Judge.

Allen E. Floyd a/k/a Therron Floyd, in proper person.

Charles J. Crist, Jr., Attorney General, and Roberta G.  
Mandel, Assistant Attorney General, for appellee.

Before COPE, GODERICH, and FLETCHER, JJ.,

PER CURIAM.

Affirmed. See Melvin v. State, 645 So. 2d 448 (Fla. 1994).

GODERICH and FLETCHER, JJ., concur.

COPE, J. (concurring in part and dissenting in part).

Although it does not make a practical difference, defendant-appellant Floyd is correct in saying that his sentence on count three, aggravated assault, exceeds the legal maximum. Aggravated assault is a third degree felony, see § 784.021(1)(a), (2), Fla. Stat. (1997). The fifteen-year sentence imposed on this count pursuant to the plea bargain exceeds the legal maximum and should be reduced to the five-year legal maximum. See Williams v. State, 500 So. 2d 501, 503 (Fla. 1986), receded from in part on other grounds, Quarterman v. State, 527 So. 2d 1380, 1382 (Fla. 1988). However, this error has no practical effect on the defendant's sentence, as his bargained sentence of fifteen years on count one is a legal sentence and is controlling on the issue of the defendant's release date.

I concur in denying relief to the defendant on his remaining claims.