

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

DAVID CABRERIZA,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-2211
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 84-1073B

Opinion filed April 28, 2004.

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

David Cabreriza, proper person.

Charles J. Crist, Jr., Attorney General, and Jill Traina, Assistant Attorney General, for appellee.

Before COPE, GERSTEN, and RAMIREZ, JJ.

PER CURIAM.

David Cabreriza ("the defendant") appeals the trial court's

denial of his motion to correct illegal sentence. As the State properly concedes, the trial court erred in scoring the first degree murder as an offense for conviction on the sentencing guideline scoresheet, since the guidelines apply only to noncapital felonies. See Doak v. State, 671 So. 2d 845 (Fla. 2d DCA 1996); Stuart v. State, 536 So. 2d 363 (Fla. 2d DCA 1988). The first degree murder charge should not have been reflected as the primary offense on the defendant's scoresheet. Armed robbery and armed burglary should have been the only offenses listed

Accordingly, we reverse and remand for resentencing. In all other respects, the order below is affirmed. On remand, the defendant's first degree murder conviction may be considered by the trial court as a reason for departing from the guidelines. See Stuart, 536 So. 2d at 364.

Affirmed in part; reversed and remanded in part.