

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 2004

WILLIE SPIVEY,

**

Appellant,

**

vs.

CASE NO. 3D03-2828

**

THE STATE OF FLORIDA,

LOWER TRIBUNAL

**

CASE NO. 96-32448B

Appellee.

**

Opinion filed February 18, 2004.

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

Willie Spivey, in proper person.

Charles J. Crist, Jr., Attorney General, and Douglas J. Glaid (Ft. Lauderdale), for appellee.

Before COPE, GODERICH, and FLETCHER, JJ.,

CONFESSION OF ERROR

PER CURIAM.

Willie Spivey appeals from the denial of his post-conviction petition to correct an illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800. Based on the state's proper confession of error, we remand the cause back to the trial court for resentencing on count one only; because the defendant is required to be sentenced on that count pursuant to the guidelines the habitual offender designation applied to count one is in error. We affirm denial of post-conviction relief regarding count two.

Affirmed in part, remanded in part.

GODERICH and FLETCHER, JJ., concur.

COPE, J. (concurring).

This court's decision in Spivey v. State, 829 So. 2d 386 (Fla. 3d DCA 2002), remanded the case for resentencing on count one only. The State is correct that count two was not reopened for resentencing and the previously-imposed habitual offender sentence on that count remained intact.