

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM A.D., 2004

DEMETRIUS JOHNSON,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

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** CASE NO. 3D04-1023

**

** LOWER
TRIBUNAL NO. F96-40835

**

Opinion filed September 22, 2004.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, David C. Miller, Judge.

Demetrius Johnson, in proper person.

Charles J. Crist, Jr., Attorney General, and John Barker, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and GODERICH and SHEPHERD, JJ.

CONFESSION OF ERROR

PER CURIAM.

Based upon the state's proper confession of error, we reverse the denial of Defendant's 3.800 motion and remand for sentencing. At the time of the offense the defendant could not be sentenced as a habitual offender for a life felony. Martin

v. State, 795 So. 2d 143 (Fla. 3d DCA 2001). As the State confesses, the Defendant should be re-sentenced for the life felony in count three pursuant to the laws in effect at the time of his offense. Green v. State, 810 So. 2d 1101 (Fla. 1st DCA 2002).

Reversed and remanded.