

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. 2005

GENE TURNER,

**

Appellant,

**

vs.

** CASE NO. 3D04-2510

THE STATE OF FLORIDA,

**

Appellee.

** LOWER
TRIBUNAL NO. 94-18396
**

Opinion filed February 2, 2005.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Pedro P. Echarte, Jr., Judge.

Gene Turner, in proper person.

Charles J. Crist, Jr., Attorney General, for appellee.

Before SHEPHERD, SUAREZ, and CORTIÑAS, JJ.

ON MOTION FOR REHEARING GRANTED

PER CURIAM.

Affirmed. See McCall v. State, 862 So. 2d 807, 808 (Fla. 2d DCA 2004) (under the habitual felony offender statute, "a

sentence includes the sanction of probation") (appeal docketed for review in Florida Supreme Court, SC04-136); Render v. State, 742 So. 2d 503 (Fla. 3d DCA 1999) (probation is a "sentence" for habitualization purposes).

We also certify conflict with Richardson v. State, 884 So. 2d 950 (Fla. 4th DCA 2004) (holding that probation is not a sentence) (appeal docketed for review in Florida Supreme Court, SC04-174).

Affirmed. Conflict certified.