

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2006

WILLARD BRYANT,

**

Appellant,

**

vs.

** CASE NO. 3D05-2332

THE STATE OF FLORIDA,

**

Appellee.

** LOWER
TRIBUNAL NO. 79-9011
**

Opinion filed December 27, 2006.

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

Willard Bryant, in proper person.

Charles J. Crist, Jr., Attorney General, and Michael E. Hantman, Assistant Attorney General for appellee.

Before COPE, C.J., and GERSTEN and SUAREZ, JJ.

On Motion for Rehearing

COPE, C.J.

By motion for rehearing defendant-appellant Bryant argues that he is entitled to a determination whether his 1979 second

degree murder conviction is a first degree felony punishable by life imprisonment, or whether it was reclassified on account of the use of a firearm, and is therefore a life felony. The defendant argues that the level of felony makes a difference in his parole eligibility. As the defendant's crime date occurred several years prior to the adoption of the sentencing guidelines, the defendant has a parole-eligible sentence. The defendant has attached to his motion correspondence with the Florida Parole Commission, which appears to support his claim that the level of felony may make a difference to consideration by the Florida Parole Commission.

We therefore reverse the order now before us in part and remand for the trial court to review the record and make a determination whether the defendant's second degree murder conviction is a life felony (by reason of reclassification pursuant to § 775.087(1), Fla. Stat. (Supp. 1976)) or was not reclassified, and is therefore a first degree felony punishable by life imprisonment.

Affirmed in part, reversed in part, and remanded for further proceedings consistent herewith.