

No. _____

LEGAL MAIL PROVIDED TO
NEW RIVER C.I.

JAN 02 2020 *PLH*

FOR MAILING
INMATES INITIALS *JLB*

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES LEE BELL - PETITIONER

vs.

STATE OF FLORIDA - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI

INDEX TO APPENDICES

- “A” Decision of Florida First District Court of Appeal Affirming Rule 3.800(a) denial
- “B” Florida Circuit Court decision denying Fla. R. Crim. P. 3.800(a) motion
- “C” Decision of Florida First District Court of Appeal denying motion for rehearing.

James L Bell
James Bell, D.C. #323863
New River Correctional Institution
P. O. Box 900
Raiford, Fl 32083

Florida First District Court of Appeal Docket

Case Docket

Case Number: 1D18-3168

Final Criminal 3.800 Notice from Taylor County

James Lee Bell vs. State of Florida

Lower Tribunal Case(s):1997-142-CF

9/25/2019 8:57:15 AM

Date Docketed	Description	Date Due	Filed By	Notes
07/30/2018	Notice of Appeal Filed		James Lee Bell	
07/30/2018	order appealed			
07/30/2018	Notice of Appeal / Acknowledgement letter			
07/30/2018	Received Records		Annie Mae Murphy	66 pages
08/10/2018	Docketing Statement			PS JAMES LEE BELL 323863
06/12/2019	Affirmed - Per Curiam Opinion			
06/28/2019	Motion for Extension of Time		James Lee Bell	to file mot for rehearing
07/08/2019	Motion for Rehearing / Rehearing En Banc		James Lee Bell	and request for certification
08/05/2019	Deny Appellant's Motion for Rehearing			Appellant's motion filed July 08, 2019, for rehearing, rehearing en banc and request for certification is denied.
08/05/2019	Grant Motion EOT for Rehearing			
08/26/2019	Mandate			
08/26/2019	West Publishing			

A
C - C

**IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
IN AND FOR TAYLOR COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO.: 1997-142-CF

vs.

JAMES LEE BELL,
Defendant.

ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE comes before this Court upon the Defendant's *pro se* "Motion to Correct Illegal Sentence under Ex Post Facto Violation Requiring Resentencing under Version of Law in Effect when Defendant Committed Original Offense," filed with the Taylor County Clerk of the Court on July 27, 2017. Upon consideration of the motion, the record, and applicable law, this Court finds and concludes:

The Defendant was resentenced in 2004 based upon the State's concession of error regarding improper designation as a violent career criminal. The Defendant attached a transcript of this 2004 resentencing hearing.

During this hearing, the State resubmitted each document necessary to prove that the Defendant qualified as a habitual felony offender and habitual violent felony offender, which would permit (but not require) the imposition of a life sentence. The Defendant's trial counsel objected to a finding that the Defendant is a habitual violent felony offender because the State's notice did not specifically mention this enhancement. Based on the defense's objection and the presentation by the State, the sentencing court found the Defendant to be a habitual felony offender.

The State then explained that the guidelines range provided for a sentence between 88 to 146.7 months but explained that the "guidelines do[] not control [because of the HFO finding] and the sentence then can be imposed outside the guidelines." *Sentencing hearing held on April 27, 2004, before the Honorable James Roy Bean, Circuit Court Judge, at the Taylor County Courthouse, Perry, Florida at 16, attached as Exhibit A to the Defendant's Motion.*

The Defendant's counsel argued that the mere fact that the Defendant qualified as an HFO was not sufficient to warrant imposition of a life sentence. *Sentencing Hearing at 22.* The State explained that the Defendant's qualifying offenses warrant the requested life sentence. *Sentencing Hearing at 24.* The sentencing court reiterated its finding that the Defendant should be designated as an HFO "for protection of society [and] . . . that this is a reason, of course, to disregard the sentencing guidelines that were in effect at the time of his original sentencing" and impose a life sentence. *Sentencing Hearing at 25-26.* Therefore, in short, the State provided the necessary documentation to support the HFO enhancement, the defense

argued against this, and the sentencing court designated the Defendant to be an HFO and imposed a life sentence based on the "protection of society."

The Defendant now alleges, in the instant motion, that his 2004 resentencing under section 775.084 "was imposed in violation of the Ex Post Facto Clause." *Motion at 4*. He seems to believe that he could not be sentenced to life in prison and, rather, could only be sentenced to his "presumptive guidelines sentence" of "88 months to 147.6 months." *Motion at 6, 10*. The Defendant does not make clear why he believes that his sentence as a habitual felony offender violates the ex post facto clause; however, it seems that he raises two issues: (1) based on the title of his motion, he seems to suggest that he believes that the version of the statute in effect at the time of his initial offense did not permit HFO designations; and (2) that the reason stated by the court was invalid, which would require "sentencing [to] be within the presumptive guidelines." *Motion at 5*. Neither of these arguments are legally valid.

First, the version of section 775.084, Florida Statutes, in effect in 1997 clearly included "Habitual felony offender" designation and the requirements were nearly identical to the current version:

(1) As used in this act:

(a) "Habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.
2. The felony for which the defendant is to be sentenced was committed:
 - a. While the defendant was serving a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense; or
 - b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.
3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.
4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.
5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

§ 775.084(1), Fla. Stat. (1997). Therefore, the statute in effect at the time the Defendant committed his offense, on June 4, 1997, included "Habitual felony offender," and the required findings were proven by the State.

Second, the resentencing procedure was a *de novo* proceeding, which permitted the sentencing court to start "a new." In other words, it was not hampered or limited by what occurred or the findings made at the original sentencing. As such, the sentencing court in 2004 could consider all mitigation and any arguments put forth by the State. Therefore, the 2004 sentencing court's finding that the HFO designation and life in prison was for "the protection of society" was not improper if such a finding had not previously been made.

Finally, this Court has attempted to consider any other potential ex post facto issue regarding the Defendant's designation as an HFO and life sentence. This Court finds no ex post facto violation or potential violations based on the 2004 resentencing transcript and the Defendant's motion.

Therefore, it is hereby **ORDERED**:

The Defendant's "Motion to Correct Illegal Sentence under Ex Post Facto Violation Requiring Resentencing under Version of Law in Effect when Defendant Committed Original Offense" is **DENIED**. The Defendant may appeal this decision to the First District Court of Appeal within thirty days of this order's effective date.

DONE in Chambers in Taylor County, Florida, on June 21, 2018.



GREG S. PARKER, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order was furnished by U.S. Mail/electronic mail, on June 28, 2018, to the following:

James Lee Bell, D.C. # 323863
New River Correctional Institution
Post Office Box 900
Raiford, Florida 32083

State Attorney's Office
e.service@sao3.org


Person Sending Copies

**DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151**

August 05, 2019

**CASE NO.: 1D18-3168
L.T. No.: 1997-142-CF**

James Lee Bell

v.

State of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed July 08, 2019, for rehearing, rehearing en banc and request for certification is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

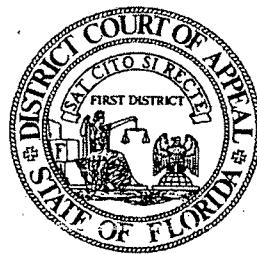
Served:

Hon. Ashley Moody, AG

James Lee Bell

th

Kristina Samuels
KRISTINA SAMUELS, CLERK



C

M A N D A T E

from

FIRST DISTRICT COURT OF APPEAL

STATE OF FLORIDA

This case having been brought to the Court, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the opinion of this Court, and with the rules of procedure, and laws of the State of Florida.

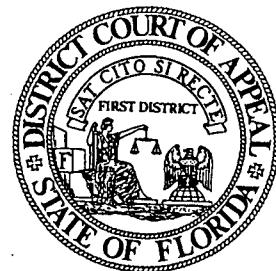
WITNESS the Honorable Stephanic W. Ray, Chief Judge, of the District Court of Appeal of Florida, First District, and the seal of said Court at Tallahassee, Florida, on this day.

August 26, 2019

James Lee Bell v.
State of Florida

DCA Case No.: 1D18-3168
Lower Tribunal Case No.: 1997-142-CF

Kristina Samuels
KRISTINA SAMUELS, CLERK
District Court of Appeal of Florida, First District



th

Mandate and opinion to: Hon. Annie Mae Murphy, Clerk

cc: (without attached opinion)

Hon. Ashley Moody, AG

James Lee Bell

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3168

JAMES LEE BELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Taylor County.
Gregory S. Parker, Judge.

June 12, 2019

PER CURIAM.

James Lee Bell appeals an order denying his motion to correct an illegal sentence. Framing the issue as an ex post facto violation, Bell argues that his life sentence imposed after resentencing is illegal because he could not be subject to habitual felony offender (HFO) sanctions upon resentencing. We affirm.

In 1997, Bell was convicted of armed robbery and sentenced to life in prison as a violent career criminal (VCC) under section 775.084, Florida Statutes (1997). In 2004, following a motion to correct illegal sentence, the circuit court vacated the VCC designation and sentence but reimposed the life term, finding that Bell qualified as an HFO. On appeal, this court affirmed. *Bell v. State*, 903 So. 2d 191 (Fla. 1st DCA 2005).

Bell argues that because the basis for the departure sentence in 1997 was found invalid in 2004, the court could not again depart during resentencing. *See Shull v. Dugger*, 515 So. 2d 748, 750 (Fla. 1987) (“[W]e hold that a trial court may not enunciate new reasons for a departure sentence after the reasons given for the original departure sentence have been reversed by an appellate court.”). The supreme court rejected this argument as applied to the habitual felony offender statute, section 775.084. *See State v. Collins*, 985 So. 2d 985, 994 (Fla. 2008) (“[W]e hold that when a habitual offender sentence is reversed because of insufficient evidence, on remand for resentencing the State may again attempt to prove that the defendant meets the criteria for such sentencing.”). *See also Molfetto v. State*, 942 So. 2d 967, 968 (Fla. 2d DCA 2006) (approving an HFO sentence imposed on resentencing after a VCC sentence was vacated).*

AFFIRMED.

B.L. THOMAS, C.J., and RAY and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

James Lee Bell, pro se, Appellant.

Ashley Moody, Attorney General, Tallahassee, for Appellee.

* Bell also argues that only precedent existing at the time his sentence became final in 1998 may be applied. Regardless, this Court’s precedent at the time permitted habitualization on resentencing. *See Rhodes v. State*, 704 So. 2d 1080, 1083 (Fla. 1st DCA 1997); *Brown v. State*, 701 So. 2d 410, 410 (Fla. 1st DCA 1997). The supreme court approved *Rhodes* and *Brown*. *Collins*, 985 So. 2d at 994.