

Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed May 14, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-368

Lower Tribunal No. 02-33897

Alex Knight,
Appellant,

vs.

The State of Florida,
Appellee.

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

Alex Knight, in proper person.

Bill McCollum, Attorney General, and Douglas J. Glaid, Assistant Attorney General, for appellee.

Before COPE and SUAREZ, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

This is an appeal from an order denying a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. We affirm in part and reverse in part.

After a jury trial, the defendant was found guilty of burglary of an occupied structure, and petit theft. Defendant-appellant Knight argues, and we agree, that the facts of his case are indistinguishable from those set forth in Dakes v. State, 545 So. 2d 939, 940 (Fla. 3d DCA 1989). On authority of Dakes, we conclude that the defendant's offense of burglary of an occupied structure must be reduced to the offense of burglary of an unoccupied structure. On this issue, we reverse the order now before us and remand with directions to reduce the charge, and to conduct a new sentencing hearing.

We affirm the denial of rule 3.850 relief on the remaining claims.

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