

Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed August 5, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-2250
Lower Tribunal No. 03-57

Ricky Myers,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Monroe County, Mark H. Jones, Judge.

George M. Evans, for appellant.

Bill McCollum, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee.

Before RAMIREZ, C.J., and WELLS, and SUAREZ, JJ.

PER CURIAM.

Affirmed. See Merritt v. State, 712 So. 2d 384, 385 (Fla. 1998) (finding that attempted battery on a law enforcement officer is a non-existent crime and ordering that the defendant be resentenced to attempted battery); J.S. v. State, 925 So. 2d 438, 438 (Fla. 5th DCA 2006) (ordering resentencing of defendant to attempted battery from the non-existent charged crime of attempted battery on a law enforcement officer); see also Velez v. State, 988 So. 2d 707, 708 (Fla. 3d DCA 2008) (finding that the defendant was not entitled to be personally present at the sentence reduction for a conviction which ran concurrent with another conviction for which he given a longer sentence).