

# Third District Court of Appeal

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

Opinion filed June 17, 2009.

Not final until disposition of timely filed motion for rehearing.

---

No. 3D09-35

Lower Tribunal Nos. 03-20844; 03-20845

---

**Dwain D. Wright,**  
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, Reemberto Diaz, Judge.

Dwain D. Wright, in proper person.

Bill McCollum, Attorney General, for appellee.

Before WELLS, ROTHENBERG, and LAGOA, JJ.

On Motion for Rehearing

PER CURIAM.

We grant appellant's motion for rehearing. The opinion issued on March 25, 2009, is withdrawn and the following opinion is substituted in its place.

Dwain D. Wright appeals the summary denial of his motions for post-conviction relief. We reverse the order only as to Wright's contention that the trial court improperly sentenced him as a prison releasee reoffender ("PRR") on his two convictions for felony battery on a person sixty-five years of age or older. See § 784.08(2)(c), Fla. Stat. (2003) (reclassifying misdemeanor battery of the first degree to felony battery of the third degree based on the victim's age). Wright may not be sentenced as a PRR because a conviction for battery on a person sixty-five years of age is not a qualifying offense. See § 775.082(9)(a)1., Fla. Stat. (2003). Under the PRR statute, this felony battery offense is not an enumerated felony and it does not fall within the catch-all provision for forcible felonies. Nelson v. State, 987 So. 2d 1261, 1262 (Fla. 5th DCA 2008) (holding that the defendant may not be sentenced as a PRR for a conviction of battery on a person sixty-five years of age or older); see Hearn v. State, 961 So. 2d 211 (Fla. 2007). Accordingly, we affirm the summary denial except as to the PRR sentencing claim. As to that claim, we reverse and remand with directions that the PRR designation be stricken as to count two in case number 03-20844, and stricken as to count one in case number 03-20845.

Affirmed in part, reversed in part, and remanded.