

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2005

HORACE HANKERSON,

Appellant,

v.

CASE NO. 5D03-3827

STATE OF FLORIDA,

Appellee.

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Opinion filed April 8, 2005

3.800 Appeal from the Circuit  
Court for St. Johns County,  
Robert K. Mathis, Judge.

Horace Hankerson, Madison, pro se.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Anthony J. Golden,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

ON MOTION TO ENFORCE MANDATE

Horace Hankerson filed a petition for writ of mandamus on January 13, 2005, which we treat as a motion to enforce the mandate issued in *Hankerson v. State*, 864 So. 2d 574 (Fla. 5th DCA 2004). We recognize that the circuit court attempted to comply with our mandate by issuing an amended order, but the same was directed to the wrong case. Specifically, the amended order should have only referenced case no. 97-387. Accordingly, we grant the motion to enforce mandate, and direct the circuit court to only reference case no. 97-387 and to follow the instructions in *Hankerson*. If an amended order is entered, it should address the sentencing guidelines claim raised

in that appeal, not the violent career criminal issue that is the subject of a different appeal. We also bring to the circuit court's attention that the attachment to the amended order that was directed to the wrong case does not appear to conclusively refute Hankerson's claim that he was sentenced under the unconstitutional 1995 sentencing guidelines. The attached sentencing transcript does not clearly establish that Hankerson was adjudicated an habitual violent felony offender, and as noted in our earlier opinion, none of the habitual offender provisions in the written sentence were checked. To comply with the mandate, the circuit court may find it necessary to conduct a new hearing and resentence Hankerson if it is unable to conclusively refute his allegations. It is so ordered.

MOTION TO ENFORCE MANDATE GRANTED.

PETERSON, GRIFFIN and PALMER, JJ., concur.