

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

JANUARY TERM 2010

J.W., A CHILD,

Appellant,

v.

Case No. 5D09-3985

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed July 9, 2010

Appeal from the Circuit Court
for Orange County,
Alan S. Apte, Judge.

Robert Wesley, Public Defender, and Amy
J. Carter, Assistant Public Defender,
Orlando, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

J.W. was found guilty of attempted assault upon a school employee -- a crime which we have previously determined to be non-existent in Florida. See *J.S. v. State*, 925 So. 2d 438 (Fla. 5th DCA 2006) (section 784.07's enhancement of punishment for assault, aggravated assault, battery, or aggravated battery committed against law enforcement official or other specified public officials did not apply to attempt to commit crimes enumerated therein). A conviction for a non-existent crime constitutes

fundamental error. *Mundell v. State*, 739 So. 2d 1201 (Fla. 5th DCA 1999). Accordingly, on remand, the trial court is directed to hold a new disposition hearing and resentence J.W. for the crime of attempted assault.

REVERSED and REMANDED.

GRIFFIN, SAWAYA and EVANDER, JJ., concur.