

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

JANUARY TERM 2011

ERIC M. AYLUARDO,

Appellant,

v.

Case No. 5D11-427

STATE OF FLORIDA,

Appellee.

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Opinion filed April 1, 2011

3.800 Appeal from the Circuit Court
for Orange County,
F. Rand Wallis, Judge.

Eric Ayluardo, Blountstown, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant challenges the summary denial of his rule 3.800 motion. He claims that his sentence exceeds the statutory maximum. As the State points out, Appellant's sentence does not exceed the maximum sentence if it was properly reclassified based upon a jury finding that he used a weapon during the commission of the crime. Based upon the limited record before us, we cannot tell whether the jury made the necessary finding. The trial judge did not attach portions of the record to refute the claim.

Accordingly, as the State properly concedes, reversal is necessary with instruction for the trial court to grant the relief or attach the proper records to refute the claim.

REVERSED AND REMANDED.

MONACO, C.J., ORFINGER and TORPY, JJ., concur.