

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ODELL BUSH

Appellant,

v.

CASE NO. 1D02-0355

STATE OF FLORIDA

Appellee.

Opinion filed May 6, 2003.

An appeal from Circuit Court for Gadsden County.
William L. Gary, Judge.

Nancy A. Daniels, Public Defender; Kathleen Stover, Assistant Public Defender,
Tallahassee, for appellant.

Charlie Crist, Attorney General; Giselle Lysten Rivera, Assistant Attorney General,
Tallahassee, for appellee.

WOLF, J.

Appellant raises two issues on appeal: I) Whether the trial court erred in resentencing appellant pursuant to Heggs v. State, 759 So. 2d 620 (Fla. 2000), without counsel, and II) Whether the conviction in count III for retaliating against a witness

could be properly enhanced for use of a firearm when use of a firearm was not alleged in the information. We determine that appellant is correct as to issue I and remand for resentencing. See McDonald v. State, 679 So. 2d 1273 (Fla. 1st DCA 1996) (holding that defendant is entitled to counsel at resentencing after prevailing on post-conviction motion). We decline to address issue II, as it was not raised in the trial court.

BARFIELD and DAVIS, JJ., CONCUR.