

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

JULY TERM 2008

TIMOTHY D. LESTER,

Appellant,

v.

CASE NO. 5D05-2489

STATE OF FLORIDA,

Appellee.

/

Opinion filed August 1, 2008

Appeal from the Circuit Court
for Marion County,
Hale R. Stancil, Judge.

James S. Purdy, Public Defender, and
Noel A. Pelella, Assistant Public Defender,
Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

ON REMAND

LAWSON, J.

We reconsider this matter on remand from the Florida Supreme Court, which directed that we conduct a harmless error analysis based upon its decision in *Galindez v. State*, 955 So. 2d 517 (Fla. 2007). See *Lester v. State*, 976 So. 2d 577 (Fla. 2008). We affirm Lester's upward departure sentence, finding that any error in the trial court's

failure to apply *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), at Lester's resentencing was harmless beyond a reasonable doubt. See *Galindez*, 955 So. 2d at 521-24.

AFFIRMED.

SAWAYA and COHEN, JJ., concur.