

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

JANUARY TERM 2010

N.J.M., A CHILD,

Appellant,

v.

Case No. 5D09-2249

STATE OF FLORIDA,

Appellee.

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Opinion filed April 16, 2010

Appeal from the Circuit Court
for Orange County,
Anthony H. Johnson, Judge.

James S. Purdy, Public Defender, and
Thomas J. Lukashow, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Rebecca Roark Wall,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

N.J.M. was adjudicated guilty of three counts of sexual battery on a child under twelve years of age by a person under eighteen years of age. He was not committed to a residential program but was, instead, placed on probation until his nineteenth birthday. Over objection, the trial court designated N.J.M. as a "serious or habitual juvenile offender" (SHO). On appeal, N.J.M. argues that section 985.47(1), Florida Statutes

(2008), permits a SHO designation only when made in conjunction with a commitment to a residential facility. The State properly concedes error.

(1) CRITERIA --A 'serious or habitual juvenile offender,' *for purposes of commitment to a residential facility* and for purposes of records retention, means a child who has been found to have committed a delinquent act or a violation of law, in the case currently before the court, . . .

§ 985.47(1), Fla. Stat (2008) (emphasis added).

On remand, the trial court is directed to strike the SHO designation.

REVERSED and REMANDED.

TORPY, EVANDER and LAWSON, JJ., concur.