

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-2226
LT Case No. 2019-CF-004011

CHRISTIAN VILLALBA-SANTOS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.800 appeal from the Circuit Court for Marion
County. Lisa D. Herndon, Judge.

Christian Villalba-Santos, Monticello, pro se.

No Appearance for Appellee.

December 15, 2023

HARRIS, J.

Christian Villalba-Santos appeals the denial of his Florida Rule of Criminal Procedure 3.800(a) Motion to Correct Illegal Sentence. In that unsworn motion, Appellant makes a fact-based challenge to the lawfulness of his conviction. Such a claim is not cognizable in a rule 3.800(a) motion and should be raised in a rule 3.850 motion. *See State v. Spella*, 567 So. 2d 1051, 1052 (Fla. 5th DCA 1990).

We therefore agree with the trial court's denial of Appellant's motion. This affirmance is without prejudice to Appellant timely seeking the appropriate relief under Florida Rule of Criminal Procedure 3.850. *See Lewis v. State*, 926 So. 2d 437, 438 (Fla. 1st DCA 2006).

AFFIRMED.

MAKAR, and MACIVER, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
