

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

STERLING CHILDERS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D03-4498

[August 24, 2005]

PER CURIAM.

Appellant appeals the summary denial of his petition for writ of *habeas corpus*. We redesignate his petition as a Florida Rule of Criminal Procedure 3.850 motion for postconviction relief and affirm. *See Baker v. State*, 878 So. 2d 1236, 1241 (Fla. 2004) (*Habeas corpus* may not be used as a substitute for motion seeking postconviction relief pursuant to rule 3.850.).

In two separate cases, appellant was found guilty of two strong arm robberies of the same convenience store, and he was sentenced to consecutive thirty-year sentences with consecutive fifteen-year minimum mandatory sentences as a habitual offender. This court affirmed appeals and the denials of rule 3.850 motions in both cases. *Childers v. State*, 782 So. 2d 946, 947 (Fla. 4th DCA 2001); *Childers v. State*, 754 So. 2d 44 (Fla. 4th DCA 2000).

Appellant argues that consecutive habitual offender sentences are improper in this case, because the two robberies should have been considered part of the same criminal episode. *See Hale v. State*, 630 So. 2d 521, 526 (Fla. 1993). This argument is without merit because the robberies occurred on different dates. In addition, it should have been raised in appellant's rule 3.850 motions. *See Burgess v. State*, 831 So. 2d 137, 139 (Fla. 2002) (*Hale* issue must be raised within two years in a rule 3.850 motion).

We have considered the remainder of appellant's arguments and find them to be without merit. Affirmed.

WARNER, KLEIN and FARMER, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case Nos. 98-6032 CF10A and 98-8081 CF10A.

Steven Wisotsky, P.A., Miami, for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.