

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

**JASON HAMILTON,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D05-664

[October 12, 2005]

KLEIN, J.

Appellant seeks review of an order denying post-conviction relief arguing that his sentence is illegal under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). We affirm because *Apprendi* is not retroactive and certify conflict.

Procedurally, appellant is in the same situation as was the defendant in *Isaac v. State*, 2005 WL 1467321 (Fla. 1st DCA June 23, 2005). They were tried and sentenced before *Apprendi*, but were resentenced, following a reversal of their sentences on direct appeal, after *Apprendi* was decided. The majority in *Isaac* held that *Apprendi* applied, but Judge Kahn dissented and explained that the majority was applying *Apprendi* retroactively, contrary to *Hughes v. State*, 901 So. 2d 837 (Fla. 2005).

In this case appellant argues that his sentence, which was increased for severe victim injury, violated *Apprendi* in that the judge, not the jury, found severe victim injury. We agree, however, with Judge Kahn's dissent that applying *Apprendi* under these circumstances would be a retroactive application and contrary to *Hughes*. So does the third district. *Galindez v. State*, 30 Florida Law Weekly D1743 (Fla. 3d DCA July 20, 2005) (certifying conflict with *Isaac*). We affirm and certify direct conflict with *Isaac*.

WARNER and GROSS, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Richard I. Wennet, Judge; L.T. Case No. 96-7782 CFA02.

Jason Hamilton, South Bay, pro se.

No appearance required for appellee.

***Not final until disposition of timely filed motion for rehearing.***