

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2010

TRACI SCARLETH GURTH,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-653

[December 29, 2010]

PER CURIAM.

Appellant challenges the sufficiency of the factual basis used to support her plea in this appeal of the denial of her Rule 3.800(a) motion. "A rule 3.800(a) motion cannot be used to challenge the factual basis for a plea." *Marshall v. State*, 35 So. 3d 121 (Fla. 4th DCA 2010) (citing *Sanchez v. State*, 979 So. 2d 1004 (Fla. 3d DCA 2008)). Appellant's challenge was to her conviction, not to her sentence, and was not cognizable in a rule 3.800(a) motion. See *Cook v. State*, 885 So. 2d 911 (Fla. 5th DCA 2004). Moreover, appellant's motion cannot be considered under Rule 3.850, because her time for filing a Rule 3.850 motion has expired. See Fla. R. Crim. P. 3.850(b).

Affirmed.

STEVENSON, TAYLOR and LEVINE, JJ., concur.

* * *

Appeal of order denying rule 3.800(a) from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John J. Hoy, Judge; L.T. Case No. 2006CF015447AXX.

Ira D. Karmelin, West Palm Beach, for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.