

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WILLIAM PETTIT,)

Appellant,)

v.)

STATE OF FLORIDA,)

Appellee.)

Case No. 2D07-5285

Opinion filed August 8, 2008.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Pamela A.M. Campbell,
Judge.

WALLACE, Judge.

William R. Pettit appeals from an order summarily denying his motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a). Mr. Pettit has been released from prison, but he has been detained while he awaits trial in a civil commitment proceeding under the Jimmy Ryce Act (the Act).¹ The postconviction court

¹ See §§ 394.910-.931, Fla. Stat. (2005). The effective date of the Act is January 1, 1999. See Ward v. State, 33 Fla. L. Weekly S564, S564 (Fla. Jan. 17, 2008).

dismissed Mr. Pettit's motion, citing Sherwood v. State, 745 So. 2d 378 (Fla. 4th DCA 1999). In Sherwood, the Fourth District said that "[w]hile rule 3.800(a) permits an illegal sentence to be corrected at any time . . . the rule means that the sentence can be corrected at any time while the sentence is being served." Id. at 378. The Sherwood court reasoned that the correction of a sentence after it has been served does not serve any useful purpose. Id.

Here, however, Mr. Pettit claims that but for his improperly calculated scoresheet, the trial court would have imposed a substantially shorter sentence on him. Under these circumstances, Mr. Pettit argues that he would have been released from custody prior to the effective date of the Act. Mr. Pettit concludes that if he had been released from custody prior to the effective date of the Act, he would not have been subject to civil commitment. Such a claim is cognizable under rule 3.800(a) even after the defendant has served his allegedly illegal sentence and is no longer imprisoned. See State v. Atkinson, 831 So. 2d 172 (Fla. 2002); Pride v. State, 973 So. 2d 658 (Fla. 3d DCA 2008).

Accordingly, we reverse the order dismissing Mr. Pettit's rule 3.800(a) motion and remand for the postconviction court to consider Mr. Pettit's claim on the merits.

Reversed and remanded for further proceedings.

CASANUEVA and STRINGER, JJ., Concur.