

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

December 16, 2005.

MARK A. VONADOR,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No: 2D05-79

BY ORDER OF THE COURT:

Appellant's motion for rehearing is granted insofar as the opinion's designation of the appellant as a habitual felony offender was in error. The motion is otherwise denied. The opinion dated September 9, 2005, is withdrawn, and the attached opinion is substituted therefor.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

cc: Mark A. Vonador
Attorney General

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MARK A. VONADOR,)
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 Appellant,)
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 STATE OF FLORIDA,)
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Case No. 2D05-79

Opinion filed December 16, 2005.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Polk County; Harvey A. Kornstein,
Judge.

STRINGER, Judge.

Mark A. Vonador appeals the dismissal of his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Although we do not agree with the trial court's reasoning for dismissal, we nevertheless affirm because Vonador's claim is not cognizable under rule 3.800(a).

In 1992, Vonador was convicted of robbery with a firearm and sentenced to thirty years in prison, with three years' minimum mandatory pursuant to section

775.087, Florida Statutes (1991). Vonador claims his three-year minimum mandatory sentence is illegal because it was not proven that he actually possessed the firearm during the commission of the crime. Vonador's claim is an attack on the factual basis for his minimum mandatory sentence and must be raised under rule 3.850 rather than rule 3.800(a). See Mancino v. State, 705 So. 2d 1379 (Fla. 1998). And, the two-year time period within which Vonador could file a rule 3.850 motion has long since past. Therefore, we affirm the trial court's dismissal of Vonador's motion.

Affirmed.

FULMER, C.J. and KELLY, J., Concur.