

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2003

WALTER HERB FYLER,

Appellant,

v.

CASE NO. 5D03-2108

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 22, 2003

3.850 Appeal from the Circuit Court
for Volusia County,
Joseph G. Will, Judge.

Walter Herb Fyler, Sneads, *pro se*.

No Appearance for Appellee.

SHARP, W., J.,

Fyler appeals from the summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850, for post-conviction relief. He claims his classification as a violent habitual offender resulted in an illegal sentence because the jury did not make findings. *See generally, Apprendi v. New Jersey*, 530 U.S. 466 (2000). However, this court has held that an habitual offender classification based on a defendant's prior criminal record does not require a jury determination pursuant to the holding in *Apprendi*. *See Walker v. State*, 790 So. 2d 1200 (Fla. 5th DCA 2001); *Wright v. State*, 780 So. 2d 216 (Fla. 5th DCA 2001).

Taking judicial notice of our own records, we note that Fyler raised this same argument in a prior 3.850 motion.¹ The fact that he is now relying on *Ring v. Arizona*, 536 U.S. 584 (2002) makes no difference. We affirm this appeal not only because it lacks merit, but also because it is successive and thus improper.

AFFIRMED.

THOMPSON and TORPY, JJ., concur.

¹ *Fyler v. State*, 827 So. 2d 1012 (Fla. 5th DCA 2002).