

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

JULY TERM 2004

JIMMY LEE LEWIS,

Appellant,

v.

CASE NO. 5D04-1414

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed July 16, 2004

3.850 Appeal from the Circuit Court
for St. Johns County,
Robert K. Mathis, Judge.

Tracy S. Carlin of Mills & Carlin, P.A., Jacksonville, for
Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee,
and Pamela J. Koller, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

Jimmy Lee Lewis, who had earlier been convicted of armed robbery with a weapon and sentenced to incarceration for forty years, appeals the summary denial of his Rule 3.850 motion for post-conviction relief.¹ Although Mr. Lewis asserts six claims of ineffective assistance of counsel, we affirm the trial court's denial of relief on the merits. We comment only on the final claim raised.

Mr. Lewis posits that the trial court intended to sentence him as a youthful offender, and

¹The appellant's conviction was affirmed *per curiam* without opinion in *Lewis v. State*, 842 So. 2d 130 (Fla. 5th DCA 2003).

instead sentenced him as an adult. He argues that his counsel was ineffective in not raising this issue on appeal. We note, first, that the claim made by Mr. Lewis is one of ineffectiveness of appellate counsel, and should therefore have been raised by a petition for writ of habeas corpus. See *Hamilton v. State*, 29 Fla. L. Weekly S281 (Fla. June 3, 2004); *Rutherford v. Moore*, 774 So. 2d 637, 643 (Fla. 2000); Fla. R. App. P. 9.141(c)(2). In order to conserve judicial resources, however, we ordered the sentencing hearing transcribed and have carefully reviewed that document. There is absolutely no indication that the trial judge intended to sentence Mr. Lewis as a youthful offender.

AFFIRMED.

GRIFFIN, MONACO and TORPY, JJ., concur.