FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-0223

CHARLES D. MOULTRIE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition for Writ of Habeas Corpus—Original Jurisdiction.

January 25, 2021

OSTERHAUS, J.

Petitioner seeks a writ of habeas corpus arguing that the trial court improperly sentenced him with a sentence running consecutively with the one he is currently serving on a different, unrelated felony. We dismiss the petition.

To the extent that the trial court misunderstood that it wasn't required to consecutively sentence Petitioner—that Petitioner's consecutive sentence was lawful but not required to be given—Petitioner can or could have sought relief on direct appeal or pursuant to Florida Rules of Criminal Procedure 3.850 or 3.800. *See, e.g.*, *Mattox v. State*, 277 So. 3d 226 (Fla. 1st DCA 2019) (reversing on direct appeal where the trial court misapprehended its sentencing discretion). "[H]abeas corpus may

not be used as a substitute for an appropriate motion seeking postconviction relief pursuant to the Florida Rules of Criminal Procedure." *Zuluaga v. Dep't of Corr.*, 32 So. 3d 674, 676 (Fla. 1st DCA 2010) (quoting *Harris v. State*, 789 So. 2d 1114, 1115 (Fla. 1st DCA 2001)). And the possibility that Petitioner failed to raise a valid sentencing issue in his direct appeal, or exhausted postconviction remedies available in the sentencing court is "not a basis upon which [he] could obtain the writ of habeas corpus." *Id.* "Habeas corpus is not a vehicle for obtaining additional appeals of issues which were raised or should have been raised on direct appeal, or which could have been, should have been, or were raised in post-conviction proceedings." *Id.* at 676–77; *see also McMillan v. State*, 254 So. 3d 1002, 1004–07 (Fla. 4th DCA 2018) (Conner, J., dissenting) (discussing why it is inappropriate to extend habeas relief in sentencing error cases beyond the relief allowed by Rule 3.800(a)). Moreover, Petitioner's case does not involve an allegation that this Court previously decided a fundamental-sentencing-error issue incorrectly, which some other district courts have considered to be a manifest injustice. *See, e.g.*, *Johnson v. State*, 9 So. 3d 640 (Fla. 4th DCA 2009) (finding manifest injustice and granting habeas corpus relief where the appellate court conceded that it had erroneously affirmed a fundamental sentencing error made by the trial court).

We therefore dismiss the petition pursuant to *Baker v. State*, 878 So. 2d 1236 (Fla. 2004), because habeas corpus may not be used in the place of raising claims that could have been raised on direct appeal or in an appropriate postconviction motion.

DISMISSED.

ROBERTS and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Charles D. Moultrie, pro se, Petitioner.

Ashley Moody, Attorney General, and Trisha Meggs Pate, Bureau Chief, Tallahassee, for Respondent.