

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

TIMOTHY JOHNSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D20-792

[November 18, 2020]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Bernard I. Bober, Judge; L.T. Case No. 09-17837CF10B.

Timothy Johnson, Malone, pro se.

Ashley Moody, Attorney General, Tallahassee, and Melynda L. Melear, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We affirm the denial of Appellant's untimely and successive motion for postconviction relief. *Carpenter v. United States*, 138 S. Ct. 2206 (2018), has not been held to apply retroactively in postconviction relief proceedings. Fla. R. Crim. P. 3.850(b)(2).

Under *Witt v. State*, 387 So. 2d 922 (Fla. 1980), *Carpenter* was an evolutionary refinement in procedural law, not a development of fundamental significance that applies retroactively to cases on collateral review. Nor does federal law require retroactive application. *United States v. Sandoval*, 435 F. Supp. 3d 393, 396-98 (D.R.I. 2020); *United States v. Davis*, No. No. 1:13-CR-28, 2019 WL 1584634, at *2 (M.D. Pa. Apr. 12, 2019); *see also State v. Neil*, 133 N.E.3d 585, 590 (Ohio Ct. App. 2019); *People v. Cutts*, 414, 88 N.Y.S.3d 332, 335 (N.Y. Sup. Ct. 2018).

Affirmed.

LEVINE, C.J., GROSS and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.