

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

MARC S. THOMAS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-1530

[October 5, 2005]

PER CURIAM.

Appellant, Marc Thomas, appeals the summary denial of his motion to correct illegal sentence, as supplemented, filed pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm the summary denial of his claim of vindictive sentencing. See *Baker v. State*, 904 So. 2d 505 (Fla. 4th DCA 2005); *Benedetto v. State*, 895 So. 2d 1126 (Fla. 4th DCA 2005) (citing *Boyd v. State*, 880 So. 2d 726 (Fla. 2d DCA), *review denied*, 888 So. 2d 621 (Fla. 2004)).

We also affirm the summary denial of his claim of illegal sentencing under *Blakely v. Washington*, 542 U.S. 296 (2004). We have held previously that the decision does not apply retroactively. See *McBride v. State*, 884 So. 2d 476 (Fla. 4th DCA 2004); see also *Paul v. State*, 898 So. 2d 1128 (Fla. 4th DCA 2005); *Burrows v. State*, 890 So. 2d 286 (Fla. 2d DCA 2004); *Burgal v. State*, 888 So. 2d 702 (Fla. 3d DCA 2004). The Supreme Court of Florida held in *Hughes v. State*, 901 So. 2d 837 (Fla. 2005), that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), did not apply retroactively. It did not address the retroactivity of *Blakely*, but, on the authority above, we conclude that there is no retroactivity of this decision either. Appellant's sentences became final in 2002, pre-*Blakely* but post-*Apprendi*. Since his challenge is based on *Blakely*, and as it is not retroactive, we conclude that the trial court did not err in rejecting this claim. To the extent the majority opinion in *Isaac v. State*, 30 Fla. L. Weekly D1582 (Fla. 1st DCA June 23, 2005), effectively applied *Blakely* retroactively, we certify conflict and align ourselves with *Galindez v. State*, 30 Fla. L. Weekly D1743 (Fla. 3d DCA July 20, 2005), holding that

Apprendi and *Blakely* did not apply retroactively to convictions that became final in 1999, even though resentencing took place in 2003 on a scoresheet error, post-*Apprendi*.

Affirmed.

STEVENSON, C.J., GUNTHER and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.800(a) motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Sandra K. McSorley, Judge; L.T. Case No. 99-2674 CFA02.

Marc S. Thomas, Indiantown, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.