

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

DANIEL A. GARCIA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-2841

[October 5, 2005]

PER CURIAM.

Daniel Garcia appeals a final order of the Palm Beach County Circuit Court summarily denying his motion to correct or modify sentence. We affirm.

Garcia was convicted of second degree murder with a firearm in September 1997 and was sentenced to thirty years in prison with a three-year mandatory minimum. He appealed to this court, which affirmed with the mandate issuing October 1998. He filed a rule 3.800(a) motion to correct sentencing error in 2000, resulting in his resentencing in November 2000 to 260 months due to a *Heggs*¹ violation. He then challenged his new sentence on the ground that it was imposed in his absence. He advises that the trial court resentenced him once more in December 2004 to twenty-one years in prison.

In June 2005, Garcia filed this rule 3.800(a) motion to correct or modify his sentence, alleging, this time, that his resentencing was illegal because his sentence was enhanced based on findings made by the trial court. In particular, he alleges that his guidelines sentence topped out at thirteen years. He cites for support *Blakely v. Washington*, 542 U.S. 296 (2004), holding that a departure sentence imposed by the trial court based on a fact found by the judge by a preponderance of the evidence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

¹ *Heggs v. State*, 759 So. 2d 620 (Fla. 2000).

The trial court did not err in summarily denying Garcia's motion. *Blakely* has been held not to apply retroactively. See *Burgal v. State*, 888 So. 2d 702 (Fla. 3d DCA 2004); *McBride v. State*, 884 So. 2d 476, 478 (Fla. 4th DCA 2004). Although Garcia was resentenced under *Heggs*, and post-*Blakely*, his conviction became final in 1998, long before both *Apprendi* and *Blakely*. 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; Krista Marx, Judge; L.T. Case No. 96-287 CFA02.

Bernard F. Daley, Jr., of the Law Office of Bernard F. Daley, Jr., Tallahassee, and Daniel A. Garcia, Belle Glade, for appellant.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.