

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2009

ANTHONY R. RODRIGUEZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-4111

[February 11, 2009]

PER CURIAM.

We affirm the order denying appellant's Florida Rule of Criminal Procedure Rule 3.800(a) motion without prejudice for appellant to raise his claim in a properly sworn and legally sufficient rule 3.850 motion if appellant has not already filed such a motion. Appellant has not demonstrated that his claim that a prior grand theft conviction should not have been included on his scoresheet can be determined from the face of the record. *Tyson v. State*, 852 So.2d 428 (Fla. 2d DCA 2003) (explaining that generally a claim of this type may not be raised in a rule 3.800(a) motion because it requires an evidentiary determination). Likewise, the question of whether the trial court "would have" imposed a 24-month sentence if the 1.6 points scored for the prior grand theft were not included on the scoresheet should be resolved in a rule 3.850 motion. *State v. Anderson*, 905 So.2d 111, 112 (Fla. 2005). See *Brooks v. State*, 969 So.2d 238, 243 n.8 (Fla. 2007).

WARNER, POLEN and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.800 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Larry Schack, Judge; L.T. Case No. 562006CF005039A.

Anthony R. Rodriguez, Perry, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.