

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

MICHAEL HUGH MOSES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-1344

[March 16, 2011]

PER CURIAM.

Appellant has repeated a claim of scoresheet error which was previously denied and affirmed on appeal. Appellant's claim that the scoring of victim injury points on his scoresheet violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), is without merit. Appellant waived the right to a jury finding regarding penetration by entering the negotiated plea to reduced charges and this specific sentence. Further, no manifest injustice results, and the alleged *Apprendi* violation is harmless. See *Galindez v. State*, 955 So.2d 517 (Fla. 2007). Although the statutory maximum for each of the second-degree felonies was increased by a few months based on the scoresheet total, the same composite sentence could have been imposed by structuring one of the sentences consecutively. We affirm.

Appellant is cautioned that the filing of repetitive or frivolous postconviction challenges and/or appeals may result in sanctions or referral to prison officials for disciplinary proceedings. See *State v. Spencer*, 751 So.2d 47 (Fla. 1999); § 944.279(1), Fla. Stat. (2009); § 944.28(2)(a), Fla. Stat. (2009).

GROSS, C.J., MAY and CIKLIN, JJ., concur.

* * *

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Jeffrey R. Levenson, Judge; L.T. Case No. 04-12823CF10A.

Michael Hugh Moses, Zephyrhills, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.