NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CHARLES BOYD,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO. 2D04-131
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	

Opinion filed May 21, 2004.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Dee Anna Farnell, Judge.

ALTENBERND, Chief Judge.

Charles Boyd appeals the summary denial of his motion to correct illegal sentence filed p
Criminal Procedure 3.800(a). We affirm.

On June 8, 1994, a jury convicted Mr. Boyd of attempted second-degree murder with a d
sentenced Mr. Boyd to seventeen years in prison. Mr. Boyd appealed, and this court affirmed his judg
See Boyd v. State, 662 So. 2d 936 (Fla. 2d DCA 1995) (table). On November 12, 1997, Mr. Boyd filed

relief pursuant to rule 3.850. The trial court denied the motion, and this court affirmed the denial. See

197 (Fla. 2d DCA 1998) (table).

On November 4, 2003, Mr. Boyd filed this rule 3.800(a) motion, claiming that his sentenc

vindictively imposed. He claims that the trial court judge told him at his sentencing hearing in 1994 tha

seven-year sentence that was offered to him prior to trial. He maintains that the trial court punished hi

imposing a seventeen-year term of imprisonment. The trial court denied the claim because Mr. Boyd's

an illegal sentence under Carter v. State, 786 So. 2d 1173 (Fla. 2001). We agree.

Mr. Boyd's claim of vindictive sentence is not cognizable in a motion to correct illegal ser

Rule of Criminal Procedure 3.800(a). A sentence is illegal for purposes of rule 3.800(a) if it imposes p

possibly impose for the charged crime under the entire body of sentencing statutes without regard to tl

circumstances. See Carter, 786 So. 2d at 1181. In 1994, attempted second-degree murder with a dea

degree felony that allowed a trial judge to impose a sentence well in excess of seventeen years' impris

777.04(4)(d), 782.04(2), 775.087(1)(b), 775.082(3)(b), Fla. Stat. (1993). Thus, Mr. Boyd's sentence is

3.800(a) even if the trial court's actions were vindictive.

In Wilson v. State, 845 So. 2d 142 (Fla. 2003), the Florida Supreme Court recently clarifi

determining on direct appeal whether a sentence may be vindictive because the trial court judge partic

negotiations.[1] Certain conduct by the trial judge creates a presumption of vindictiveness. When a def

existence of this presumption, the burden then shifts to the State to rebut the presumption with "affirma

Id. at 156. This type of analysis is not applicable in a rule 3.800(a) proceeding and should have been

---

[1] We note that it is not clear from Mr. Boyd's motion that the trial judge in this case participated in negotiations or whether the judge was merely aware of negotiations that had occurred between counsel.

Therefore, we hold that an allegedly vindictive sentence that is not otherwise illegal unde

is not a sentence that may be re-examined by way of a motion filed pursuant to Florida Rule of Crimina

Affirmed.

DAVIS and WALLACE, JJ., Concur.

---

[2] We are uncertain whether our decision conflicts with the Third District's recent decision in Smith v. State, 842 So. 2d 1047 (Fla. 3d DCA 2003). That decision involves a recent sentencing hearing, and the motion may have been filed pursuant to rule 3.800(b).