

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

KEITH ALLEN SHEPHERD,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D04-3658

Opinion filed December 10, 2004.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Hillsborough County; Chet A. Tharpe,
Judge.

CANADY, Judge.

Keith Allen Shepherd challenges the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The trial court denied the motion, finding that it was untimely filed. We affirm without comment the denial of grounds one, two, and three on that basis. However, Shepherd also raised a claim that his sentences are illegal. Although we do not reach the merits

of that claim, we note that it could have been raised in a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a) and therefore would not be barred by the two-year time limitation. As this court did in Gill v. State, 829 So. 2d 299, 300 (Fla. 2d DCA 2002), we reverse the trial court's order with instructions to treat the illegal sentence claim as one filed pursuant to Florida Rule of Criminal Procedure 3.800(a).

Affirmed in part, reversed in part, and remanded.

SALCINES and VILLANTI, JJ., Concur.