

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOSHUA CAMERON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D01-2353

Opinion filed August 31, 2001.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Hendry County;
G. Keith Cary, Judge.

THREADGILL, Acting Chief Judge.

Joshua Cameron timely appeals the summary denial of his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. Because he sought only resentencing and did not ask to withdraw his plea, we affirm.

According to his motion, Cameron entered into a plea agreement for a sentence at the low end of the guidelines for the crime of robbery with a deadly weapon. The 1995 guidelines recommended a prison sentence of 88.6 months to 147.7 months,

and Cameron received a prison sentence of 88.6 months. According to the State, the 1994 guidelines recommended a prison sentence of 56 months to 93.2 months. After the supreme court's decision in Heggs v. State, 759 So. 2d 620 (Fla. 2000), Cameron filed a motion for resentencing under Florida Rule of Criminal Procedure 3.800(a). The motion was denied because the sentence did not constitute a departure under the 1994 guidelines. On appeal, this court affirmed without prejudice to Cameron's filing for relief under rule 3.850. Cameron v. State, 788 So. 2d 297 (Fla. 2d DCA 2001).

Cameron then filed essentially the same motion but cited rule 3.850.

Cameron did not seek to withdraw his plea. The trial court denied the motion, finding that it raised the same claim as the rule 3.800(a) motion, which had been denied. Because Cameron did not seek to withdraw his plea, we affirm. Cameron may file another rule 3.850 motion, which shall not be deemed successive, if he wants to withdraw his plea. See, e.g., Johnson v. State, 782 So. 2d 486 (Fla. 2d DCA 2001) (affirming denial of rule 3.850 motion that sought only Heggs resentencing without prejudice to any subsequent motion seeking to withdraw plea, which Johnson first raised in rehearing); Strawder v. State, 786 So. 2d 1259 (Fla. 2d DCA 2001).

Affirmed.

GREEN and DAVIS, JJ., Concur.