

Third District Court of Appeal

State of Florida

Opinion filed July 3, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-181
Lower Tribunal No. 98-12247 D

Mauricio Solorzano,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Lourdes Simon, Judge.

Mauricio Solorzano, in proper person.

Ashley Moody, Attorney General, for appellee.

Before LINDSEY, HENDON, and GORDO, JJ.

HENDON, J.

Mauricio Solorzano appeals from the denial of his Florida Rule of Criminal Procedure 3.800 motion to correct an illegal sentence. We affirm.

The defendant asserts that his current habitual offender sentence is illegal because he does not have the requisite prior convictions. He alleges that a 1995 offense, case number F95-3111B, was an adjudication withheld and thus cannot be used as a prior offense for habitual offender sentencing. First, the record shows that the judgment in case number F95-3111B for robbery and aggravated battery is an adjudication of guilt, not an adjudication withheld. Thus, it can be counted as a requisite prior offense for purposes of habitualization.¹ Second, the defendant raised the same issue on appeal from a prior denied motion, and this Court affirmed. See Solorzano v. State, 965 So. 2d 1191 (Fla. 3d DCA 2007). The defendant's current rule 3.800 motion was properly denied as successive.

Affirmed.

¹ In the October 11, 2018 order denying 3.800 relief, the trial court observed that there was an apparent discrepancy in the deputy clerk's notes reflecting that on May 12, 1995, the adjudication was withheld, and another entry on that date indicating a judgment of guilt. The later judgment and sentence, however, indicates that the defendant was actually adjudicated guilty; the latter judgment and sentence prevails.