

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2004

WILLIAM E. MATTHEWS,

**

Petitioner,

**

vs.

** CASE NO. 3D04-2909

THE STATE OF FLORIDA,

**

Respondent.

** LOWER TRIBUNAL
CASE NO. CF99-1345
**

Opinion filed December 29, 2004.

A Case of Original Jurisdiction - Mandamus.

William E. Matthews, in proper person.

Charles J. Crist, Jr., Attorney General, for respondent.

Before GERSTEN, FLETCHER, and WELLS, JJ.

PER CURIAM.

We deny William E. Matthews' petition for writ of mandamus, through which he seeks to compel the trial court to correct his habitual offender sentence, pursuant to Blakely v. Washington, ___ U.S. ___, 124 S. Ct. 2631, 159 L. Ed. 2d 403 (2004). We

note first that Blakely does not apply retroactively to cases on collateral appeal. In re Dean, 375 F.3d 1287, 1290 (11th Cir. 2004) (“Regardless whether Blakely established a ‘new rule of constitutional law’ . . . the Supreme Court has not expressly declared Blakely to be retroactive to cases on collateral appeal.”). See also McBride v. State, 884 So. 2d 476 (Fla. 4th DCA 2004). Further, Matthews’ general assertion that the habitual offender statute is illegal under Blakely and that he should have been given a guidelines sentence is incorrect. Blakely does not declare habitual offender sentencing illegal, and because Matthews was legally sentenced as an habitual offender the sentencing guidelines are inapplicable.

Petition denied.