

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2005

SCOTTIE MACK,

**

Appellant,

**

vs.

** CASE NO. 3D05-819

THE STATE OF FLORIDA,

**

Appellee.

** LOWER
TRIBUNAL NO. 99-30541
**

Opinion filed May 18, 2005.

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

Scottie Mack, in proper person.

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

Before COPE, SHEPHERD and ROTHENBERG, JJ.

PER CURIAM.

Scottie Mack appeals an order denying his motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a).

We affirm the denial of the claim of defendant-appellant Mack under Apprendi v. New Jersey, 530 U.S. 466 (2000). The Apprendi decision does not apply to sentences under Florida's prison releasee reoffender statute. See Gudinas v. State, 879 So. 2d 616, 618 (Fla. 2004); Robinson v. State, 793 So. 2d 891, 892-93 (Fla. 2001); McGregor v. State, 789 So. 2d 976, 977-78 (Fla. 2001).

The defendant's claim that his crime should have been classified as burglary of an unoccupied, rather than occupied, structure has already been decided against him in a previous motion under Florida Rule of Criminal Procedure 3.850, and is thus barred. Even if the issue were properly before us, the claim has no merit. See McAllister v. State, 859 So. 2d 611, 612 (Fla. 1st DCA 2003) (burglary of a garage which is attached to a house is burglary of a dwelling).

Affirmed.