

# Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed July 9, 2008.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D08-736  
Lower Tribunal No. 90-9210

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**Kelvin D. Harris,**  
Petitioner,

vs.

**The State of Florida,**  
Respondent.

A case of original jurisdiction – habeas corpus.

Kelvin D. Harris, in proper person.

Bill McCollum, Attorney General, for respondent.

Before GERSTEN, C.J., and COPE and SUAREZ, JJ.

PER CURIAM.

By petition for writ of habeas corpus, Kelvin D. Harris (“Harris”) asks this Court to reconsider its prior per curiam decision in Harris v. State, 974 So. 2d 1076

(Fla. 3d DCA 2008) (“case number 3D07-1463”). Harris claims this Court’s opinion constitutes manifest injustice and disparate treatment. We deny the petition.

Initially, we must determine whether habeas relief is appropriate here. An appellate court should correct manifest injustice in habeas corpus proceedings. See e.g., Adams v. State, 957 So. 2d 1183 (Fla. 3d DCA 2006). Further, disparate treatment of co-defendants can result in manifest injustice. See Williams v. State, 947 So. 2d 694 (Fla. 4th DCA 2007); Romero v. State, 637 So. 2d 7 (Fla. 4th DCA 1994). However, inconsistent decisions in separate, unrelated cases do not constitute disparate treatment. See Ousley v. Sec’y for Dep’t of Corrections, No. 06-15642, 2008 WL 657856, at \*3-4 (11th Cir. March 13, 2008).

Harris claims disparate treatment based on allegedly inconsistent decisions of this Court in his case and other separate, unrelated cases. Thus, the claim is not for disparate treatment, and does not warrant habeas relief on that ground. Assuming *arguendo* that a manifest injustice claim for habeas relief is proper on other grounds, we have re-examined the original file in case number 3D07-1463, and conclude that Harris’ claims are without merit.

In 1990, Harris was convicted of armed robbery and armed burglary of a conveyance. The trial court sentenced Harris, as a habitual felony offender, to two concurrent life sentences. This Court affirmed the convictions and sentence on

direct appeal. Harris v. State, 594 So. 2d 873 (Fla. 3d DCA 1992). In April 1995, Harris began challenging his sentence in various postconviction relief motions. The trial court denied all of these motions, and this Court affirmed. The latest appeal was case number 3D07-1463.

Harris contends that his sentence is illegal because it was imposed when life felonies were not subject to the habitual offender statute. See State v. McBride, 848 So. 2d 287 (Fla. 2003). Harris, however, was not convicted for life felonies, but for first degree felonies punishable by life. Therefore, he was properly sentenced, as a habitual offender, to a life sentence. Pope v. State, 841 So. 2d 677, 679 (Fla. 5th DCA 2003).

Finding no manifest injustice or disparate treatment, we, therefore, deny the petition for writ of habeas corpus.

Petition denied.