

Third District Court of Appeal

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

Opinion filed October 15, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-963

Lower Tribunal No. 98-37639

British Moss,
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, John W. Thornton, Judge.

British Moss, in proper person.

Bill McCollum, Attorney General, for appellee.

Before SHEPHERD, CORTIÑAS, and SALTER, JJ.

PER CURIAM.

British Moss appeals a lower court order denying his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm.

Moss's Current Motion

Moss's current motion, like the one filed with the trial court eight months before, argues that his sentence is illegal on the basis of Heggs v. State, 759 So. 2d 620 (Fla. 2000). This claim has already been litigated, denied, and affirmed on appeal. See Moss v. State, 937 So. 2d 673 (Fla. 3d DCA 2006). We will not consider it again. See Goodman v. State, 984 So. 2d 607 (Fla. 3d DCA 2008).

Moss also contends that because his judgment and sentence were pending when the United States Supreme Court decided Apprendi v. New Jersey, 530 U.S. 466 (2000), he is entitled to relief. We disagree. Moss did not object to a departure during his sentencing hearing and did not raise the constitutional issue on direct appeal. He may not do so now. See Evans v. State, 946 So. 2d 1, 15 (Fla. 2006); Burton v. State, 969 So. 2d 1087, 1088-89 (Fla. 5th DCA 2007).

Order to Show Cause

It has been ten years since Moss was convicted, and nine years since his sentence was imposed. In that time, Moss has filed numerous petitions and postconviction motions.¹ In each case, we have either denied Moss's original filings in this Court or affirmed the trial court's denial of his filings there.

¹ This Court has seen Moss—or his alias, Quincy Phillips—a total of seven times: 3D99-2724; 3D01-2666; 3D02-879; 3D02-3221; 3D05-2285; 3D07-301; and, this case, 3D08-963.

On June 19, 2008, we issued an order to show cause why Moss should not be prohibited from further pro se filings in this Court. After considering his response and the State's reply, we find that Moss's motion below and appeal here are frivolous. Further frivolous or previously-rejected pro se filings by Moss regarding circuit court case 98-37639 may subject him to appropriate sanctions. See State v. Spencer, 751 So. 2d 47, 48 (Fla. 1999).

Affirmed.