

# Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed January 20, 2010.

Not final until disposition of timely filed motion for rehearing.

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No. 3D09-2708

Lower Tribunal No. 97-10896, 97-10894

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**Excellus Hyland,**  
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, Bertila Soto, Judge.

Excellus Hyland, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, CORTIÑAS and ROTHENBERG, JJ.

COPE, J.

This is an appeal of an order denying a motion filed under Florida Rule of Criminal Procedure 3.800(a). We affirm.

Excellus Hyland's motion was filed in Miami-Dade County case number 97-10896. He states that he is serving an eleven-year guidelines sentence, and alleges that through a scoresheet error, his guidelines maximum was erroneously calculated. He maintains that if the error is corrected, he must be resentenced to a lower sentence in order to stay within the guidelines range.

The State filed a response in the trial court saying, among other things, that Rule 3.800(a) cannot be used for this purpose. The State is incorrect. Rule 3.800(a) states in part that “[a] court may at any time correct . . . an incorrect calculation made by it in a sentencing scoresheet . . . .”

On the merits, however, we affirm. Defendant-appellant Hyland maintains that he was not convicted of aggravated assault in Miami-Dade County circuit court case number 96-31101, but the record before us contains an order withholding adjudication on entry of a guilty plea to the offense of aggravated assault as reduced in count two of the information. See Fla. R. Crim. P. 3.703(d)(6) (“‘Conviction’ means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.”).

Affirmed.