

Third District Court of Appeal

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

Opinion filed July 21, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D10-1219

Lower Tribunal No. 95-38735A

John L. West,
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, Nushin Sayfie, Judge.

John L. West, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE and SALTER, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

This is an appeal of an order denying a motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a). As the trial court order indicates, defendant-appellant John L. West has unsuccessfully made the same claims previously, but he contends that the court should apply the manifest injustice exception to the res judicata doctrine. See State v. McBride, 848 So. 2d 287 (Fla. 2003).

We reject the defendant's argument. The defendant claims that he does not qualify as a habitual violent felony offender, but the defendant is in error. See Johnson v. State, 763 So. 2d 283, 284 (Fla. 2000) (persons are entitled to relief under State v. Thompson, 750 So. 2d 643 (Fla. 1999), if they committed their offenses during the applicable window period and were sentenced as habitual violent felony offenders based on the qualifying offense of aggravated stalking). As the defendant was not habitualized on the basis of an aggravated stalking conviction, his argument under Thompson is without merit. The defendant's remaining claims are without merit. In light of the foregoing, no manifest injustice has been shown for McBride purposes.

Affirmed.