

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

MELVIN PEREZ,

Appellant,

v.

Case No. 5D18-2764

STATE OF FLORIDA,

Appellee.

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Decision filed February 12, 2019

3.800 Appeal from the Circuit  
Court for Osceola County,  
Jon B. Morgan, Judge.

Tonya D. Cromartie, of The Law Office of  
Tonya D. Cromartie, P.A., Daytona Beach,  
for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Rebecca Rock  
McGuigan, Assistant Attorney General,  
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EDWARDS, EISNAUGLE and HARRIS, JJ., concur.

APPENDIX "A"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

MELVIN PEREZ,

Appellant,

v.

CASE NO. 5D18-2764

STATE OF FLORIDA,

Appellee.

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DATE: March 21, 2019

**BY ORDER OF THE COURT:**

ORDERED that Appellant's Motion for Rehearing and Rehearing En Banc,  
filed February 21, 2019, is denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Joanne P. Simmons*  
JOANNE P. SIMMONS, CLERK



Panel: Judges Edwards, Eisnaugle, and Harris (acting on panel-directed motion(s))  
En Banc Court (acting on en banc motion)

cc:

Office of Attorney General    Rebecca Rock McGuigan    Tonya D. Cromartie  
Melvin Perez

APPENDIX "C"

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR OSCEOLA COUNTY, FLORIDA

CASE NO. 1997-CF-1593

1997-CF-1663

DIVISION 10-A

STATE OF FLORIDA,  
Plaintiff,

vs.

MELVIN PEREZ,  
Defendant.

ORDER DENYING  
MOTION TO CORRECT SENTENCE

This matter came before the Court for consideration of Defendant Melvin Perez' Motion to Correct Sentence, filed April 27, 2018, pursuant to Florida Rule of Criminal Procedure 3.800(a).

Procedural History

**1997-CF-1593:** On March 31, 2000, Defendant pled nolo contendere to second-degree murder with a firearm and was sentenced to 25 years in the Department of Corrections. The Fifth District Court of Appeal *per curiam* affirmed. *Perez v. State*, 770 So. 2d 694 (table) (Fla. 5th DCA 2000).

On May 1, 2003, he filed a Motion for Postconviction Relief, which was denied as untimely on October 2, 2003. The Fifth District Court of Appeal affirmed without prejudice for him to file a petition for writ of habeas corpus seeking permission to file a belated Rule 3.850 motion. *Perez v. State*, 864 So. 2d 1245 (Fla. 5th DCA 2004).

He filed the Petition for Writ of Habeas Corpus on April 5, 2004. The Court conducted an evidentiary hearing on October 22, 2004, and denied relief on December 28, 2004. The Fifth District Court of Appeal *per curiam* affirmed. *Perez v. State*, 920 So. 2d 14 (table) (Fla. 5th DCA 2006).

On July 1, 2013, he filed a Motion for Jail Time Credit, which was granted on July 11, 2013, to reflect 970 days of credit for time served as of the date of sentencing.

APPENDIX "B"

**1997-CF-1663:** On June 9, 2000, Defendant was convicted of aggravated assault with a firearm in Count 1 and attempted robbery with a firearm in Count 2. He was sentenced to the following terms in the Department of Corrections: 5 years for Count 1 and 15 years for Count 2, to run concurrent with each other but consecutive to any other sentence. The Fifth District Court of Appeal *per curiam* affirmed. *Perez v. State*, 787 So. 2d 873 (table) (Fla. 5th DCA 2001).

On February 24, 2003, he filed a Motion for Postconviction Relief. The Court conducted an evidentiary hearing on April 23, 2004, and denied relief in an Order filed May 14, 2004. The Fifth District Court of Appeal *per curiam* affirmed. *Perez v. State*, 888 So. 2d 45 (table) (Fla. 5th DCA 2004).

On July 1, 2013, he filed a Motion for Jail Time Credit, which was granted on July 11, 2013, to reflect 1,040 days of credit for time served as of the date of sentencing.

Ground I: Defendant alleges the trial court erroneously scored the murder charge as a prior offense on the sentencing guidelines scoresheet. He argues the date of the robbery is consistently listed as July 29, 1997, but the date of the murder is not clear - the Charging Affidavit lists the date as July 30, 1997, but the Information and Indictment list a range from July 28 through July 31, 1997, and the sentencing guidelines scoresheet identifies the offense date as July 28, 1997. He further argues in the State's Response to his Motion for Postconviction Relief, it acknowledged that the robberies occurred prior to the murder.

"A court may at any time correct an illegal sentence imposed by it or an incorrect calculation made by it in a sentencing guidelines scoresheet ...." Fla. R. Crim. P.

3.800(a)(1). However:

Rule 3.800(a) is intended to provide relief for a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law. It is concerned primarily with whether the terms and conditions of the punishment for a particular offense are permissible as a matter of law. It is not a vehicle designed to re-examine whether the procedure employed to impose the punishment comported with statutory law and due process.

*Judge v. State*, 596 So. 2d 73, 77 (Fla. 2d DCA 1991), *rev. denied*, 613 So. 2d 5 (Fla. 1992).

In the murder case, 1997-CF-1593, the scoresheet filed March 31, 2000, included only the offense of second-degree murder with a firearm and no points for prior record, resulting in a sentencing range of 246 months (20.5 years) to 410 months (34.1 years) of imprisonment. See page 2 of the sentencing guidelines scoresheet. The 25-year sentence did not exceed the guidelines or the statutory maximum for this life felony, even though the Judgment erroneously listed it as a second-degree felony. See Judgment and Sentence.

In the assault and robbery case, 1997-CF-1663, the scoresheet filed June 9, 2000, included 29 points for the murder offense, resulting in a sentencing range of 69.75 (5.8 years) to 116.25 (9.7 years) months of imprisonment, but the sentence imposed was an upward departure based on the fact that the primary offense was scored at level 7 or higher and Defendant had been convicted of one of more offenses that would have scored at level 8 or higher. See page 4 of the sentencing guidelines scoresheet. Furthermore, the sentences did not exceed the statutory maximum terms. See Judgment and Sentence.

Finally, the allegation of an irregularity in the date of the murder offense would require an evidentiary determination, which is not cognizable under Rule 3.800(a).

Based on the foregoing, this Court finds that Defendant's sentences are not illegal as a matter of law. The cases on which Defendant relies are distinguishable, because all involved direct appeals rather than corrections under Rule 3.800(a).<sup>1</sup>

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<sup>1</sup> *Gore v. State*, 552 So. 2d 1185 (Fla. 5th DCA 1989); *Gilbert v. State*, 680 So. 2d 1132 (Fla. 3d DCA 1996); *Griffith v. State*, 675 So. 2d 911 (Fla. 1996); *Lawrence v. State*, 590 So. 2d 1068 (Fla. 5th DCA 1991).

Ground II: Defendant alleges the trial court impermissibly considered his lack of remorse during sentencing.

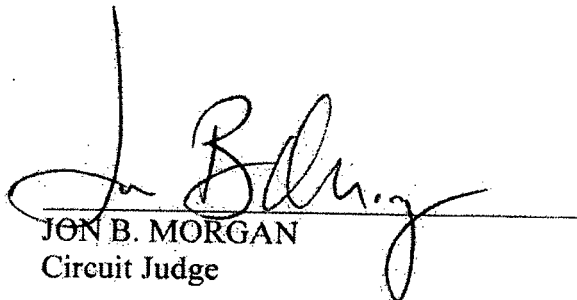
“Such a claim asserts error in the sentencing process, as opposed to the legality of the sentence itself, and thus, cannot be raised in a Rule 3.800(a) motion.” *Collier v. State*, 148 So. 3d 797 (Fla. 1st DCA 2014). Therefore, as in Ground I, this Court finds that Defendant’s sentences are not illegal as a matter of law, and again, the cases on which he relies all involved direct appeals.<sup>2</sup>

Based on the foregoing, it is ORDERED AND ADJUDGED:

1. The Motion to Correct Sentence is DENIED.
2. Copies of the following portions of the record are attached to this Order and incorporated by reference: Judgments, Scoresheets, and Sentences.
3. Defendant may file a Notice of Appeal in writing within 30 days of the date of rendition of this Order.

DONE AND ORDERED in chambers at Kissimmee, Osceola County, Florida, this

5<sup>th</sup> day of July 2018.

  
JON B. MORGAN  
Circuit Judge

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<sup>2</sup> *Shepard v. State*, 227 So. 3d 746 (Fla. 1st DCA 2017) [updated cite]; *K.Y.L. v. State*, 685 So. 2d 1380 (Fla. 1st DCA 1999) [cited incorrectly in Defendant’s motion]; *Ritter v. State*, 885 So. 2d 413 (Fla. 1st DCA 2004); *Gilchrist v. State*, 938 So. 3d 654 (Fla. 4th DCA 2006); *Donaldson v. State*, 16 So. 3d 314 (Fla. 4th DCA 2009)