

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-523

GEORGE C. PUGH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Mark Borello, Judge.

June 4, 2019

PER CURIAM.

AFFIRMED.

WETHERELL, RAY, and WINSOR, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

George C. Pugh, pro se, Appellant.

APPENDIX A

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2008-CF-016758-BXXX-MA

DIVISION: CR-D

STATE OF FLORIDA

v.

GEORGE CHRISTOPHER PUGH,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO
CORRECT ILLEGAL SENTENCE AND ORDER TO SHOW CAUSE**

This matter came before the Court upon Defendant's "Motion to Correct Illegal Sentence," filed November 3, 2017, pursuant to Florida Rule of Criminal Procedure 3.800(a).¹

On May 5, 2009, a jury found Defendant guilty of Sale or Delivery of Cocaine. (Ex. A.) On June 9, 2009, the Court sentenced Defendant as a habitual felony offender ("HFO") to a term of twenty-five years in prison. (Ex. B.) The First District Court of Appeal affirmed Defendant's judgment and sentence. (Ex. C.) While his appeal was pending, Defendant filed a Motion to Correct Illegal Sentence pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). That motion was denied. (Ex. D.) Following his appeal, Defendant filed a Motion for Postconviction Relief pursuant to Florida Rule of Criminal Procedure 3.850, which was also denied and affirmed on appeal. (Exs. E, F, G.) Subsequent thereto, Defendant filed three Motions to Correct Illegal Sentence pursuant to Florida Rule of Criminal Procedure 3.800(a). All three Motions were denied and affirmed on appeal. (Exs. H, I, J, K, L, M, N, O, P.)

¹ Haag v. State, 591 So. 2d 614 (Fla. 1992) (mailbox rule); Rivera v. Dep't of Health, 177 So. 3d 1 (Fla. 1st DCA 2015).

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In the Order denying Defendant's third Motion to Correct Illegal Sentence, the Court detailed the history regarding Defendant's first and second Motions to Correct Illegal Sentence. (Ex. O at 1-2.) The Court denied relief on Defendant's third Motion to Correct Illegal Sentence, finding the Motion was procedurally barred based on the law of the case doctrine and did not meet the manifest justice exception. (Ex. O at 2-4.)

In the instant Motion, Defendant challenges his HFO sentence on the same basis argued in his prior Motions to Correct Illegal Sentence. (Exs. H, K, N.) Collateral estoppel prohibits Defendant from raising this sentencing claim once again in the instant Motion. See Wright v. State, 222 So. 3d 620, 621 (Fla. 1st DCA 2017); Franklin v. State, 825 So. 2d 1030, 1031-32 (Fla. 1st DCA 2002).

Defendant also contends the State did not prove he had the requisite prior convictions for imposition of an HFO sentence. As noted in the Court's August 14, 2013, Order denying Defendant's first Motion to Correct Illegal Sentence, at sentencing, the State provided original certified judgments and sentences for case numbers 2000-CF-10956 and 2002-CF-2662, to serve as qualifying offenses under section 775.084, Florida Statutes. (Ex. I at 2; Q; R at 7-10, 15.) Those offenses meet the requirement of section 775.084, that "defendant has previously been convicted of any combination of two or more felonies. . . ." § 775.084(1)(a)1., Fla. Stat. (2008). Accordingly, Defendant's claim is denied.

ORDER TO SHOW CAUSE

Defendant has filed several unsuccessful postconviction filings, in which he has attempted to challenge his HFO designation. (Exs. H, K, N.) The Court previously cautioned Defendant from filing further frivolous Motions with the Court. (Ex. O at 4.) Instead of heeding

the Court's cautionary language, Defendant filed the instant Motion. A "limit on successive claims is necessary to give due weight to the finality and the presumption of legality of a final judgment and to restore the public's confidence in our criminal system of justice" Gaffney v. State, 878 So. 2d 470, 472 (Fla. 2004). Frivolous *pro se* pleadings may result in sanctions, including prohibition against Defendant filing further *pro se* pleadings. Moreover, when a court determines that a prisoner has filed a frivolous petition, that prisoner is subject to sanctions pursuant to the Department of Corrections ("DOC"). § 944.279(1), Fla. Stat. (2017). DOC sanctions include forfeiture of gain time. § 944.28(2)(a), Fla. Stat. (2017). A court is not required to order a defendant to show cause why the DOC should not sanction him or her because the DOC's disciplinary procedures afford the defendant due process. Ibarra v. State, 45 So. 3d 911, 914 (Fla. 4th DCA 2010). A court, however, must "first provide notice and an opportunity to respond before preventing that litigant from bringing further attacks on his or her conviction and sentence." Spencer v. State, 751 So. 2d 47, 48-49 (Fla. 1999).

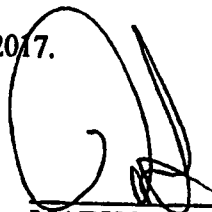
Upon review of the instant Motion in conjunction with the record, this Court finds the Motion to be frivolous. Because this Court has found Defendant's arguments and filings to be without merit, this Court directs Defendant to show cause why this Court should not bar him from filing further *pro se* claims in the instant case.

Accordingly, it is **ORDERED** that:

1. Defendant's *pro se* "Motion to Correct Illegal Sentence," filed November 3, 2017, is hereby **DENIED**;
2. Defendant is **DIRECTED** to show cause within thirty (30) days, in writing, why this Court should not bar him from further *pro se* filings in the instant case;
3. The Clerk of the Court is hereby **DIRECTED** to forward a certified copy of this Order to the appropriate correctional institution for the imposition of disciplinary proceedings against Defendant, in accordance with section 944.279, Florida Statutes (2017); and
4. This is a non-final, non-appealable Order.

DONE AND ORDERED in Chambers, in Jacksonville, Duval County, Florida, on this

30th day of November, 2017.



MARK BORELLO
Circuit Judge

Copies to:
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