

APPENDIX (A)

DECISION OF STATE COURT OF APPEALS

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

ROBERT MOORE,

Appellant,

v.

Case No. 5D17-1946

STATE OF FLORIDA,

Appellee.

Opinion filed September 7, 2017

3.800 Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Robert Moore, Crawfordville, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kellie A. Nielan, Assistant
Attorney General, Daytona Beach, for
Appellee.

PER CURIAM.

Appellant, Robert Moore, appeals the trial court's denial of his Florida Rule of Criminal Procedure 3.800(a) motion on the grounds that this is the "fourth or fifth" time Appellant has raised the same argument attacking his consecutive sentences. We affirm. Appellant is warned that the filing of any additional successive and frivolous pro se petitions or appeals attacking his convictions and sentences entered in the Fifth Judicial

Circuit Case No. 2007-CF-127 will result in the issuance of an order to show cause why he should not be denied further access to this court. See *State v. Spencer*, 751 So. 2d 47 (Fla. 1999).

AFFIRMED.

EVANDER, LAMBERT and EISNAUGLE, JJ., concur.

APPENDIX (B)

Order of State Court of Appeals Denying Rehearing

DATED: October 11, 2017

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

ROBERT MOORE,

Appellant,

v.

CASE NO. 5D17-1946

STATE OF FLORIDA,

Appellee.

_____/

DATE: October 11, 2017

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing, filed September 25, 2017, 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 Evander, Lambert, and Eisnaugle

cc:

Office of Attorney General

Kellie A Nielan

Robert Moore

APPENDIX (C)

DECISION OF STATE TRIAL COURT

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR CITRUS COUNTY, FLORIDA**

STATE OF FLORIDA

v.

CASE NO.: 2007-CF-127

ROBERT NEAL THOMAS MOORE,
Defendant.

ORDER ON [FIFTH] MOTION TO CORRECT ILLEGAL SENTENCE

THIS COURT having considered Defendant's [Fifth] Motion to Correct Illegal Sentence, having also reviewed the Emergency Motion to Take Judicial Notice, having reviewed the records of this case and all documents pertinent to Defendant's motion, and being otherwise fully advised in the premises finds as follows:

1. On January 25, 2008, following a jury trial, Defendant was found guilty of count I, Attempted Second Degree Murder, and count II, Aggravated Battery, Great Bodily Harm. On March 10, 2008, Defendant was sentenced to 30 years in the Department of Corrections on count I and to 15 years on count II, consecutive to count I, with credit for time served. The State appealed the 15 year sentence, arguing that it should be reclassified and Defendant should be sentenced to 30 years on count II. The Order was affirmed in part, vacated in part and remanded by the Fifth District Court of Appeal (Fifth DCA) for resentencing. See State v. Moore, 19 So.3d 408 (Fla. 5th DCA 2009). On November 4, 2009, Defendant was resentenced to 30 years on count II, for a total sentence of 60 years in the Department of Corrections. After a Motion to Correct Sentence pursuant to Rule 3.800(b)(2) was denied, the Fifth DCA per curiam affirmed the Court's ruling by Mandate issued September 29, 2010.

2. On October 29, 2010, the Defendant filed a Motion for Post Conviction Relief which this Court denied (after a response from the State) in an Order dated January 25, 2011. The Fifth DCA per curiam affirmed the Court's ruling by Mandate issued June 8, 2011. On June 8, 2015, the Defendant filed his second Motion to Correct Illegal Sentence alleging his dual re-classified convictions sentenced consecutively were illegal because both arose from the same criminal episode and that his scoresheet contained a dispositional error. This Court denied his motion but allowed the correction of the scoresheet. The Fifth DCA per curiam affirmed this Court's ruling by Mandate issued December 11, 2015. His appeal to the Florida Supreme Court was dismissed. On September 19, 2016, the Defendant filed his third Motion to Correct Illegal Sentence, again arguing his consecutive sentencing scheme violated double jeopardy, which this Court also denied in an Order dated September 27, 2016. The Fifth DCA per curiam affirmed the decision of this Court in a Mandate issued January 9, 2017. Prior to this Mandate, the Defendant submitted a fourth Motion to Correct Illegal Sentence, once again arguing his consecutive sentencing scheme was illegal. That Order was also denied on December 16, 2016, appealed, and per curiam affirmed by the Fifth DCA in a Mandate issued April 17, 2017.

3. The instant motion filed on May 5, 2017 along with an Emergency Motion to Take Judicial Notice (of case law) is the Defendant fifth Motion to Correct Illegal Sentence where he again alleges consecutive sentences for dual re-classified convictions is illegal and a manifest injustice. The Defendant cites Almendaras v. State, 916 So. 2d 29, 30 (Fla. 4th DCA 2005) which holds that "sentences imposed under a sentencing enhancement statute may not run consecutively if the offenses occurred during a single criminal episode." However, the present case is distinguished because his dual convictions were reclassified, not enhanced. State v.

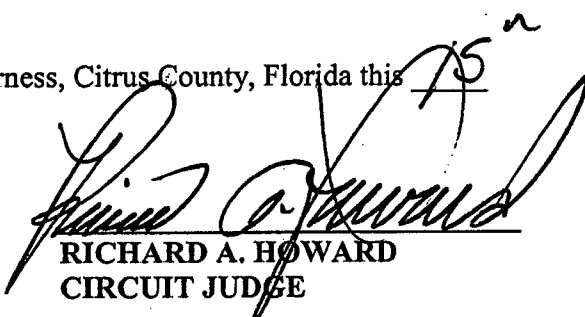
Moore, 19 So. 3d 408, 410 (Fla. 5th DCA 2009) (stating "this case involves a reclassification, not an enhancement").

4. This is the fourth or fifth time the Defendant has raised this argument. The Defendant is cautioned to read State v. Spencer, 751 So.2d 47 (Fla.1999) and section 944.279(1) Florida Statutes, before submitting frivolous claims. Based upon the foregoing, it is thereupon:

ORDERED AND ADJUDGED:

1. The Defendant's [Fifth] Motion to Correct Illegal Sentence is **DENIED**.
2. The Defendant shall have thirty (30) days from the date of this Order to file a written notice of appeal.

DONE AND ORDERED in Chambers at Inverness, Citrus County, Florida this 15th day of May, 2017.

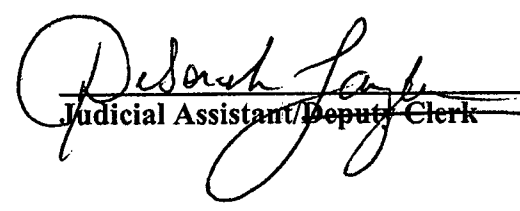

RICHARD A. HOWARD
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by U.S. Mail/courthouse mailbox delivery this 15th day of May, 2017.

Robert Moore, DC#U32584, Wakulla Correctional Institution – Annex, 110 Melaleuca Drive, Crawfordville, Florida 32327-4963

Office of the State Attorney, via courthouse mail.


Judicial Assistant/Deputy Clerk