

IN THE SUPREME COURT OF FLORIDA

EDUARDO VALENZUELA,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC00-1843

RESPONDENT'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

The State rejects petitioner's statement of the case and facts because it does not present the facts relevant to the trial court and district court decisions. The relevant facts are shown in the circuit court order denying relief at I16-20 with attachments at I21-88.

THIS CAUSE comes before the Court upon Defendant's Motion to Correct Illegal Sentence filed October 20, 1999. Defendant claims that the trial court erred in using convictions from the state of Georgia in finding him to be a habitual felony offender.

Defendant has filed five post-conviction motions, including the instant one [footnotes omitted through out], all but the first attacking the same issue: whether Defendant's habitualization as a felony offender constitutes an illegal sentence. The Court has addressed the issue in previous orders, detailing its rationale and providing case law relied upon by the Court in its analysis, yet Defendant persists in filing successive motions.

After his direct appeal was **per curiam** affirmed, Defendant filed a 3.800 motion alleging that he was illegally sentenced under Chapter 89-280, Laws of Florida, which violated the single-subject rule. The Court denied the motion, explaining that his offense did not fall within the window period which would entitle him to be resentenced and affirming that his prior record did in fact qualify him as a habitual offender. Defendant filed a Motion for Rehearing, which was also denied. Defendant appealed these decisions to the First District, which affirmed **per curiam**.

Defendant then filed a Motion to Correct Illegal Sentence pursuant to Florida Rule of Criminal Procedure 3.800, asserting that the trial court err in basing his habitual offender classification on prior Georgia conviction because he was sentenced after Chapter 89-280, Laws of Florida, was declared unconstitutional. The Court denied this motion on September 13, 1994, again explaining that Defendant was correctly sentenced under the habitual offender law as it existed on the date of his offense. Defendant also appealed this order to the First District, which affirmed **per curiam**.

Defendant's next motion, a 3.850, couched his argument in terms of ineffective assistance of counsel for "falsely stipulating" to information contained in his scoresheet leading to the habitual offender classification. The Court denied this motion, specifically noting that

[A]lthough Defendant's second and third grounds for relief can be raised at any time because they are cognizable under [Florida Rule of Criminal Procedure] 3.800, both grounds are barred because they were raised by Defendant in prior postconviction motions or on direct appeal. All of Defendant's prior postconviction motions have been denied and affirmed on appeal.

The instant motion is simply a rehashing of his previous filings, some using different words to describe the same concept. While it is well-settled that Rule 3.800 contains no proscriptions against successive motions. Barnes v. State, 661 So.2d 71 (Fla. 2d DCA 1995); Braddy v. State, 520 So.2d 660 (Fla. 4th DCA 1988), the Second District Court of Appeal has noted that "under some circumstances, a repetitive rule 3.800(a) motion may be procedurally barred." Vowell v. State, 647 So.2d 1069 (Fla. 2d DCA 1994). When the "exact same" issue has been raised, Witherspoon v. State, 710 So.2d 143 (Fla. 5th DCA 1998), or when "precisely the same claim" has been decided in a previous motion, Nicewonder v. State, 698 so.2d 376 (Fla. 1st DCA 1997), a subsequent 3.800 motion may be barred as successive.

In Raley v. State, 675 So.2d 170, 1763 (Fla. 5th DCA 1996), the Fifth District Court of Appeal stated that "a defendant is not entitled to successive review of a specific issue decided against him in an earlier post-conviction proceeding, even if the question pertains to the legality of his sentence." Id at 173-74. To hold otherwise would "subject our courts to unrestrained barrages of successive motions filed by defendants claiming relief from illegal sentences." Id. At 174. Likewise, the Second District declined to review a successive 3.800 motion from a defendant, acknowledging that while a 3.800 motion has no "succession" limitations **per se**, "if the merit of these issues has been the subject of prior orders, there is no reason for the court to address them again in absence of a change in case law." Burns v. State, 637 so.2d 937 (Fla. 2d DCA 1994).

In the instant case, Defendant has repeatedly raised the same issue both on direct appeal and in four post-conviction motions. The Court has carefully evaluated the merits of the claims and set forth its findings in previous orders; Defendant should not be permitted to squander precious judicial resources by continuing to argue a point that has already been raised and decided. Thus, it is

ADJUDGED that Defendant's Motion to Correct Illegal sentence is hereby **denied**. No subsequent motions raising this issue will be entertained by the Court. Defendant is advised that further attempts to bring this issue before the Court again may result in sanctions including, but not limited to, disciplinary confinement and forfeiture of gaintime. **See** Gorge v. State, 712 So.2wd 440 n1 (Fla. 3d DCA 1998).

ORDERED in chambers on February 7, 2000.

An appeal was taken pursuant to Florida Rule of Appellate Procedure 9.141(b) and the district court summarily affirmed with citations to Bover v. State, 732 So.2d 1187 (Fla. 3d DCA) **review granted**, 743 So.2d 508 (Fla. 1999) and Torres v. State, 751 So.2d 701 (Fla. 3d DCA 2000). Valenzuela v. State, 746 So.2d 777 (Fla. 1st DCA 2000)

SUMMARY OF ARGUMENT

The trial court correctly affirmed the postconviction motion whether it be treated as a successive rule 3.800(a) motion or as an untimely rule 3.850 motion. The Bover and Torres cases cited by the district court for the proposition of untimeliness are relevant but not controlling because the trial court denied the motion on two alternative grounds and not merely as untimely.

ARGUMENT

ISSUE

HAS THE PETITIONER SHOWN THAT THE CIRCUIT COURT
ERRONEOUSLY DENIED A POSTCONVICTION MOTION
WHICH WAS SUCCESSIVE IF TREATED UNDER RULE
3.800(A) AND UNTIMELY UNDER RULE 3.850?
(Restated))

The trial court order denying relief with attachments shows that petitioner has repeatedly raised the same claim under both rule 3.800(a) and 3.850 and that the claim has been repeatedly denied and earlier affirmed by the district court.

The trial court order shows that the trial court did not err. Thus, the **decision** of the district court is correct. It also appears that discretionary jurisdiction has been improvidently granted and should be discharged. This Court's decision in Bover may be relevant but it will not be controlling on the facts.

CONCLUSION

Petitioner has not shown that the decision of the district court affirming the trial court order is erroneous. Jurisdiction should be discharged as improvidently granted or, alternatively, the district court decision should be affirmed.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by mail to Eduardo Valenzuela, Baker Correctional Institution, P.O. Box 500, Sanderson, Florida 32087-0500 this 11th day of June 2001.

Respectfully submitted and served,

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[AGO# L00-1-13301]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

James W. Rogers
Attorney for State of Florida

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Appendix A