

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

JULY TERM 2011

THOMAS CHILDREE,

Appellant,

v.

Case No. 5D11-1510

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 7, 2011

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

Thomas Childree, Perry, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Megan Saillant,
Assistant Attorney General, Daytona
Beach, for Appellee.

EVANDER, J.

Thomas Childree appeals the summary denial of his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We find only one of the issues raised by Childree to have merit. In his motion, Childree alleged that the trial court had improperly imposed a Prison Releasee Reoffender (PRR) sentence.¹ The trial court erroneously concluded that Childree's claim was not cognizable in a motion

¹See § 775.082(9), Fla. Stat. (2009).

for post-conviction relief. Where, as was alleged in the instant case, a defendant does not qualify for a PRR sentence, the imposition of same constitutes an illegal sentence for which relief may be sought under rule 3.850. See, e.g., *Cassista v. State*, 57 So. 3d 265 (Fla. 5th DCA 2011); *Brinson v. State*, 851 So. 2d 815 (Fla. 2d DCA 2003).

On remand, the trial court shall either attach portions of the record that conclusively refute Childree's claim or hold an evidentiary hearing on the motion.

Cassista.

AFFIRM, in part; REVERSE, in part.

PALMER and TORPY, JJ., concur.