

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CANOM KHADAYA
WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D09-3707

Opinion filed May 28, 2010.

An appeal from the Circuit Court for Bay County.
Richard Albritton, Judge.

Nancy A. Daniels, Public Defender and Richard M. Summa, Assistant Public
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General and Charlie McCoy, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

In Williams v. State, 8 So. 3d 1266 (Fla. 1st DCA 2009), we affirmed
Appellant's convictions for trafficking cocaine and possession of marijuana with
intent to deliver, but we remanded for resentencing. On remand, the trial court

sentenced Appellant to 20 years in prison for the trafficking offense and five years concurrent for the possession offense. We affirm this sentence.

Appellant contends that his convictions and sentence violate due process because section 893.101, Florida Statutes (2006), eliminated the mens rea element of the offenses for which he was convicted. This, according to Appellant, transforms the offenses from felonies into “strict liability offenses” for which the maximum sentence that can be imposed consistent with due process is no more than one year in jail. There is no merit whatsoever to this argument. And the argument is procedurally barred in any event.

Appellant’s claim that section 893.101 renders his convictions unconstitutional is barred by the law of the case because we previously affirmed Appellant’s convictions. Williams, 8 So. 3d at 1266 (“We affirm Appellant’s convictions without comment ...”). Moreover, this claim has no merit and has been expressly rejected by this court and our sister courts. See Harris v. State, 932 So. 2d 551, 552 (Fla. 1st DCA 2006); Taylor v. State, 929 So. 2d 665 (Fla. 3d DCA 2006); Wright v. State, 920 So. 2d 21, 25 (Fla. 4th DCA 2005), rev. denied, 915 So. 2d 1198 (Fla. 2005); Burnette v. State, 901 So. 2d 925, 927-28 (Fla. 2d DCA 2005).

Appellant’s claim that his sentence is unconstitutional because it exceeds one year in jail was not preserved below. The claim was not raised at the

sentencing hearing on remand, nor was it properly preserved by Appellant’s rule 3.800(b)(2) motion because the claim is not a “sentencing error” that may be corrected under that rule. See Jackson v. State, 983 So. 2d 562, 572-74 (Fla. 2008) (holding that a “sentencing error” that can be corrected under rule 3.800(b) is an error in the sentence itself and not any error that might conceivably occur during a sentencing hearing). We recognize that the constitutionality of the sentencing statute has been identified as a “sentencing error” that is subject to correction under rule 3.800(b). Id. at 573 (citing Salters v. State, 758 So. 2d 667, 669 n.4 (Fla. 2000)). But Appellant is not challenging the constitutionality of a sentencing statute; rather, he is challenging the statute that defines the elements of the offense for which he was convicted. Although creatively packaged as a “sentencing error” claim, Appellant’s claim actually goes to the legality of his convictions, not his sentence.

Counsel for Appellant has raised these same arguments in numerous cases before this court, including Harris.¹ We affirmed all of these cases.² It is one thing

¹ Upon counsel for Appellant’s motion, we took judicial notice of the briefs filed in Harris. The briefs reflect that counsel for Appellant made essentially the same arguments in that case as he is making in this case. Although counsel for Appellant claimed in his motion that our opinion in Harris was “ambiguous and poorly written,” the opinion could not have been more clear in its rejection of the arguments made by counsel for Appellant in this case. See Harris, 932 So. 2d at 552 (“We affirm all issues raised on appeal.”).

² See, e.g., Hamilton v. State, 2010 WL 1473941 (Fla. 1st DCA Apr. 14, 2010) (table); Henry v. State, 29 So. 3d 294 (Fla. 1st DCA 2010) (table); Pugh v. State,

for counsel to zealously advocate a colorable legal claim on behalf of a client; it is quite another for counsel to continue to raise the same non-meritorious arguments in the face of adverse rulings, which is what counsel for Appellant is doing at this point. Accordingly, counsel for Appellant is cautioned against continuing to raise these same arguments absent a favorable ruling from a higher court or a change in the law.

AFFIRMED.

WETHERELL and MARSTILLER, JJ., CONCUR; WEBSTER, J., CONCURS IN RESULT ONLY.

25 So. 3d 563 (Fla. 1st DCA 2010) (table); Knox v. State, 25 So. 3d 563 (Fla. 1st DCA 2010) (table); Schofield v. State, 993 So. 2d 968 (Fla. 1st DCA 2008) (table); Rasheed v. State, 992 So. 2d 258 (Fla. 1st DCA 2008) (table); Robinson v. State, 969 So. 2d 1023 (Fla. 1st DCA 2007) (table); Sanders v. State, 965 So. 2d 128 (Fla. 1st DCA 2007) (table); Canty v. State, 954 So. 2d 1158 (Fla. 1st DCA 2007) (table); Davis v. State, 944 So. 2d 351 (Fla. 1st DCA 2006) (table); Williams v. State, 940 So. 2d 1172 (Fla. 1st DCA 2006) (table); Gray v. State, 931 So. 2d 905 (Fla. 1st DCA 2006) (table).