

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

AARON DERON FOSTER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2024-2771

September 4, 2026

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Michelle Sisco, Judge.

Aaron Deron Foster, pro se.

SILBERMAN, Judge.

Aaron Deron Foster appeals the order denying his petition for writ of habeas corpus. We affirm.

In 2005, Foster was convicted of robbery while actually possessing a firearm, and the trial court sentenced him as a prison releasee reoffender (PRR) to life imprisonment. *See* § 775.082(9)(a), Fla. Stat.

(2003). This court affirmed his conviction and sentence, and the mandate issued in 2006.

In his petition, Foster argued that his confinement was illegal because a jury, not the judge, was required to determine whether he qualified for treatment as a PRR under *Erlinger v. United States*, 602 U.S. 821, 835 (2024) (holding that a jury must determine beyond a reasonable doubt whether a defendant's past offenses were committed on separate occasions before a court may impose a mandatory minimum prison term under the Armed Career Criminal Act), and *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (holding that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"). The postconviction court correctly denied Foster's petition because "habeas corpus may not be used as a substitute for an appropriate motion seeking postconviction relief pursuant to the [rule]." *Baker v. State*, 878 So. 2d 1236, 1241 (Fla. 2004) (alteration in original) (quoting *Harris v. State*, 789 So. 2d 1114, 1115 (Fla 1st DCA 2001)). Notably, our records show that Foster cited *Apprendi* in making this same argument in a motion filed in 2010 under Florida Rule of Criminal Procedure 3.800(a), and this court affirmed the order denying his motion. *See Foster v. State*, 53 So. 3d 1035, 1035 (Fla. 2d DCA 2011) (table decision).

If the court had treated Foster's petition as another rule 3.800(a) motion, a denial would still have been appropriate because the Florida Supreme Court has recently held that claims of error under *Apprendi* and its progeny are not cognizable under rule 3.800(a). *See Maye v. State*, 51 Fla. L. Weekly S116, 117 (Fla. May 14, 2026).

Affirmed.

VILLANTI and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.