

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

JANUARY TERM 2005

TONY BOUNO,

Appellant,

v.

Case No. 5D05-205

STATE OF FLORIDA,

Appellee.

Opinion filed April 8, 2005

3.800 Appeal from the Circuit Court
for Orange County,
Stan Strickland, Judge.

Tony Bouno, Clermont, pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Appellee.

TORPY, J.

Appellant challenges the order denying his motion to correct illegal sentence wherein he alleges that he was the victim of a vindictive sentence. The trial court denied the motion as not being cognizable under Florida Rule of Criminal Procedure 3.800(a). We agree and affirm.¹ *Reese v. State*, 30 Fla. L. Weekly D403 (Fla. 3d DCA

¹ We further note that Appellant's prior unsuccessful motion for postconviction relief under rule 3.850 raised this same claim. *Bouno v. State*, 827 So. 2d 1011 (Fla.

Feb. 9, 2005); *Boyd v. State*, 888 So. 2d 726 (Fla. 2d DCA), *review denied*, 884 So. 2d 621 (Fla. 2004).

In concluding as we have, we have not overlooked our recent opinion in *Johnson v. State*, 877 So. 2d 795 (Fla. 5th DCA 2004), wherein we remanded for further consideration a similar claim made pursuant to rule 3.800(a). A review of this court's file in that case, however, reveals that the state never raised the procedural objection that is the basis of our holding today, and that issue was not addressed in the panel opinion. Instead, the only issue addressed in *Johnson* was whether the lower court had correctly applied the law of the case doctrine. Therefore, our opinion today does not conflict with *Johnson*. *See Reese*.

AFFIRMED.

GRIFFIN and MONACO, JJ., concur.

5th DCA 2002). We decline, therefore, to treat Appellant's motion as one asserted under rule 3.850.