

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D23-2972
LT Case No. 2017-CF-004507-A

DARYL KEITH BURNS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Marion County.
Peter M. Brigham, Judge.

Daryl Keith Burns, Bushnell, pro se.

Ashley Moody, Attorney General, Tallahassee, and Whitney
Brown Hartless, Assistant Attorney General, Daytona Beach, for
Appellee.

March 28, 2024

PER CURIAM.

Daryl Keith Burns appeals the trial court's denial of his petition for writ of habeas corpus in which he challenged his conviction and sentence. The trial court denied Burns' petition stating that a petition for writ of habeas corpus could not be used as a substitute for raising issues on direct appeal or in a motion for

postconviction relief. While the trial court's reasoning and finding that Burns was not entitled to relief were correct, it should have dismissed Burns' petition rather than deny it. *See Baker v. State*, 878 So. 2d 1236, 1245–46 (Fla. 2004) (finding habeas petitions collaterally attacking an underlying conviction or sentence should be dismissed as unauthorized).

Because the trial court should have dismissed Burns' claim, we reverse and remand with instruction to dismiss Burns' petition for writ of habeas corpus as unauthorized.

REVERSED and REMANDED with instruction.

MAKAR, SOUD, and KILBANE, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.
