

Appendix A

Florida Supreme Court's Order

Supreme Court of Florida

MONDAY, DECEMBER 17, 2018

CASE NO.: SC18-1518

Lower Tribunal No(s).:

1D18-105;

622008CF000273XXCXM

EDUARDO DE JUAN

vs. STATE OF FLORIDA

Petitioner(s)

Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

CANADY, C.J., and PARIENTE, QUINCE, LABARGA, and LAWSON, JJ.,
concur.

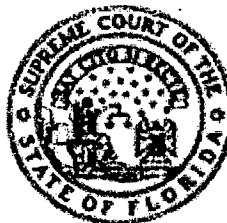
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Test:



John A. Tomasino

Clerk, Supreme Court



db

Served:

TRISHA MEGGS PATE
QUENTIN HUMPHREY
EDUARDO DE JUAN

HON. GREGORY S. PARKER, JUDGE
HON. ANNIE MAE MURPHY, CLERK
HON. KRISTINA SAMUELS, CLERK

Appendix B

First District Court of Appeal Order

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-0105

EDUARDO DE JUAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Taylor County.
Gregory S. Parker, Judge.

April 30, 2018

PER CURIAM.

Following a jury trial in 2011, Appellant was convicted of escape and sentenced to fifteen years in prison. In May 2017, Appellant filed a motion in the trial court pursuant to rule 3.800(a), Florida Rules of Criminal Procedure, seeking to correct what Appellant claimed was an illegal sentence. In his motion, Appellant contended that the elements of escape were not met because he only went onto the roof of Taylor Correctional Institution while he was in custody and did not actually leave the prison. See § 944.40, Fla. Stat. (2010) (providing the elements of escape and establishing the crime as a second degree felony). Appellant therefore argued that he was at worst guilty of

attempted escape. The trial court dismissed the motion and Appellant brought this appeal.

Rule 3.800 is “not the correct procedural vehicle for attacking the merits of an underlying criminal conviction.” *Echeverria v. State*, 949 So. 2d 331, 335 (Fla. 1st DCA 2007). A challenge to the sufficiency of the evidence cannot be raised in any kind of collateral postconviction motion. *See Smith v. State*, 41 So. 3d 1037, 1040 (Fla. 1st DCA 2010) (“[C]laims of insufficient evidence have long been held to be procedurally barred in collateral proceedings.”). The trial court was therefore correct to dismiss the rule 3.800(a) motion.

Furthermore, even if Appellant was correct and he was guilty of only attempted escape, an attempt to escape from lawful confinement satisfies that element of the crime of escape. *See Keel v. State*, 438 So. 2d 850 (Fla. 1st DCA 1983); Fla. Std. Jury Instr. (Crim.) 27.1. Escape, whether attempted or completed, is a second degree felony under section 944.40, punishable by up to fifteen years in prison pursuant to section 775.082(3)(c), Florida Statutes (2010). Appellant’s fifteen year sentence was lawful.

AFFIRMED.

B.L. THOMAS, C.J., and BILBREY and JAY, JJ., concur.

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

Edwardo De Juan, pro se, Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, for Appellee.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

August 07, 2018

CASE NO.: 1D18-0105
L.T. No.: 2008-273-CF

Edwardo De Juan

v.

State of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed May 22, 2018, for rehearing and rehearing en banc is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

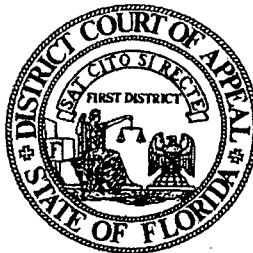
Served:

Hon. Pamela Jo Bondi, AG

Edwardo Dejuan

th


KRISTINA SAMUELS, CLERK



**Additional material
from this filing is
available in the
Clerk's Office.**