

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

Appellee.

Case No. 2D18-4712

CASANUEVA, KELLY, and SMITH, JJ., Concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKE LAND, FL 33802-0327

November 05, 2019

CASE NO.: 2D18-4712
L.T. No.: 00-2982CFANO

WILLIAM RAY MC NEAL, JR.

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

The mandate of this court issued September 13, 2019, is hereby withdrawn. Appellant's motion for extension of time is granted to the extent that appellant's "Motion for Rehearing/Request for Written Opinion, Motion for Rehearing En Banc, Motion for Certification" is accepted as timely filed.

Appellant's "Motion for Rehearing/Request for Written Opinion, Motion for Rehearing En banc, Motion for Certification" is denied.

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


Served:

Attorney General, Tampa

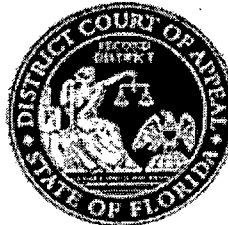
Cynthia E. Richards, A.A.G.
Ken Burke, Clerk

William Ray Mc Neal, Jr.

ag



Mary Elizabeth Kuenzel
Clerk



**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY
CRIMINAL DIVISION**

STATE OF FLORIDA

v.

WILLIAM R. MCNEAL, JR.,
Person ID: 572907, Defendant.

CASE NO.: CRC00-02982CFANO
UCN: 522000CF002982XXXXNO
DIVISION: M

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE came before the Court on the Defendant's *pro se* Motion to Correct Illegal Sentence filed October 5, 2018, pursuant to Florida Rule of Criminal Procedure 3.800(a). Having considered the motion, record, and applicable law, the Court finds as follows.

Procedural History

On December 15, 2000, Defendant was charged by Amended Information with attempted first-degree murder with a deadly weapon, pursuant to sections 782.04(1)(a) and 777.04, Florida Statutes (2000). (See Exhibit A: Amended Felony Information). On April 25, 2001, a jury found Defendant guilty of the lesser-included offense of attempted second-degree murder with a weapon. (See Exhibit B: Verdict Form). The Defendant was sentenced as a prison releasee reoffender (PRR) to a mandatory minimum term of thirty years' imprisonment. (See Exhibit C: Judgment and Sentence). The Defendant filed a direct appeal and on January 17, 2003, the Second District Court of Appeal *per curiam* affirmed his judgment and sentence. The mandate issued on February 10, 2003. See McNeal v. State, 843 So. 2d 271 (Fla. 2d DCA 2003) (table).

Analysis

Rule 3.800(a) permits a court to correct a defendant's illegal sentence at any time if the record, on its face, reveals that the defendant is entitled to relief. Carter v. State, 786 So. 2d 1173, 1180 (Fla. 2001). A sentence is illegal if it is one that no judge could have possibly imposed for the crime charged under the entire body of sentencing law under any set of factual circumstances. Id. at 1178. The burden is on the party seeking relief to show why the sentence is illegal. Prieto v. State, 627 So. 2d 20, 21 n.1 (Fla. 2d DCA 1993).

The Defendant claims that at sentencing the Court improperly reclassified his attempted second-degree murder conviction to a first-degree felony pursuant to § 775.087, Florida Statutes,

under which certain felonies are classified into higher degrees because of the possession or use of a weapon. Specifically, the Defendant claims that the use of a weapon was an essential element of his offense, thereby making the offense exempt from reclassification under the version of the statute that was in effect at the time. See § 775.087(1), Florida Statutes (2000). The Defendant claims that the State made the weapon an essential element by charging the Defendant with its use in the information and instructing the jury as to the charge of attempted second-degree murder with a weapon.

The Defendant's claim is without merit. Pursuant to Tinsley v. State, 683 So. 2d 1089, 1090 (Fla. 5th DCA 1996), "the 'essential element of the crime' language of section 775.087(1) references the *substantive criminal law*, and not the allegations of the information or indictment." (emphasis added) (citing Miller v. State, 460 So. 2d 373 (Fla. 1984) and Strickland v. State, 437 So. 2d 150 (Fla. 1983)). As noted in Tinsley, "[s]econd degree murder can be attempted in a variety of ways other than by use of a knife or weapon. That statute does not require as an essential element that a knife or any other weapon be used." Tinsley, 683 So. 2d at 1090. Additionally, the use of a weapon is not an essential element of second degree murder, as noted by statute and reflected in the jury instructions. See § 782.04(2), Fla. Stat. (2000); (See Exhibit D: Transcript of Jury Trial, pp. 165-166). Thus, the Defendant's claim that the weapon was an essential element of the offense making reclassification improper is without merit. Thus, this claim is denied.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Correct Illegal Sentence is hereby **DENIED**.

DEFENDANT IS NOTIFIED that this is a final order and that he has thirty days from the date of this Order within which to file an appeal, should he choose to do so.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this _____ day of _____, 2018. A true and correct copy of the foregoing has been furnished to the parties listed below.

Philip J. Federico, Circuit Judge

Original Signed

OCT 31 2018

PHILIP J. FEDERICO
Circuit Judge

State v. McNeal, CRC00-02982CFANO

cc: Office of the State Attorney

William R. McNeal, Jr., DC# 274245
Columbia Correctional Institution
216 S.E. Corrections Way
Lake City, FL 32025-2013