

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DAVID P. MORAN,

Appellant,

v.

Case No. 5D19-2611

STATE OF FLORIDA,

Appellee.

Decision filed December 24, 2019

3.800 Appeal from the Circuit
Court for Orange County,
Gail A. Adams, Judge.

David P. Moran, Lake City, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., ORFINGER and COHEN, JJ., concur.

APPENDIX B

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. 2016-CF-6177
DIVISION 10

STATE OF FLORIDA,
Plaintiff,

v.

DAVID P. MORAN,
Defendant.

ORDER DENYING MOTION
TO CORRECT ILLEGAL SENTENCE

This matter came before the Court for consideration of David P. Moran's Motion to Correct Illegal Sentence, filed July 31, 2019, pursuant to Florida Rule of Criminal Procedure 3.800(a).

Relevant Procedural History: On July 27, 2017, Defendant was convicted of attempted first-degree murder (with a weapon) (law enforcement officer) in Count 1, aggravated battery with a deadly weapon or causing great bodily harm (law enforcement officer) in Count 2, aggravated fleeing or attempting to elude a law enforcement officer causing injury or damage in Count 3, and battery in Count 4. On September 15, 2017, he was sentenced to the following terms in the Department of Corrections: life for Count 1 (mandatory life), 25 years for Count 2 (mandatory 5 years), and 5 years for Count 3. He was also sentenced to 1 year in the Orange County Jail for Count 4. Counts 2, 3, and 4 were ordered to run concurrently; Counts 2, 3, and 4 2343 ordered to run consecutive to Count 1. The Fifth District Court of Appeal *per curiam* affirmed; *Moran v. State*, 5D17-3044, 2019 WL 855547 (Fla. 5th DCA Feb. 19, 2019). The Mandate was issued on March 25, 2019.

In the meantime, on April 2, 2018, through appellate counsel, Defendant filed a Motion to Correct Sentencing Error pursuant to Rule 3.800(b)(2), which was granted on April 13, 2018. On April 16, 2018, his sentence was corrected to strike the 5-year minimum mandatory on Count 2.

Defendant now alleges the Court erred by sentencing him to consecutive terms of imprisonment because Counts 1 and 2 “are for the exact same episode of conduct and the same victim.” In support, he cites *Fraley v. State*, 641 So. 2d 128 (Fla. 3d DCA 1994).

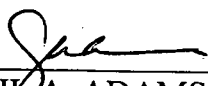
This claim lacks merit. *Fraley* is distinguishable because it involved a challenge to consecutive minimum mandatory sentences. Pursuant to section 775.021(4)(a), Florida Statutes, when a defendant commits acts which constitute one or more separate criminal offenses during one criminal episode, the sentencing judge may order the sentences to be served concurrently or consecutively. Therefore, Defendant’s sentence is not illegal.

Based upon the foregoing, it is hereby ORDERED AND ADJUDGED:

1. The Motion to Correct Illegal Sentence is DENIED.
2. Copies of the Amended Information, Judgment, and Sentence are attached to this Order and incorporated by reference.
3. Defendant may file a Notice of Appeal in writing within 30 days of this Order.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this

12 day of August 2019.



GAIL A. ADAMS
Circuit Judge