

Appendix A

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

Appellee.

Case No. 2D20-1088

SILBERMAN, VILLANTI, and SLEET, JJ., Concur.

Appendix B

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

STATE OF FLORIDA,

CASE NO.: CRC97-20414CFANO

v.

UCN: 521997CF020414XXXXNO

TODD C. HUGHES,
Person ID: 393881, Defendant. /

DIVISION: I

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE came before this Court on Defendant's *pro se* Motion to Correct Illegal Sentence, filed on February 10, 2020, pursuant to Florida Rule of Criminal Procedure 3.800(a). Having considered the motion, record, and applicable law, this Court finds as follows:

Procedural History

On September 8, 2000, Defendant entered a plea of *nolo contendere* to one count each of sexual battery (count one), kidnapping (count two), attempted sexual battery (count three), and aggravated battery (count four); he was sentenced to terms of twenty-five years in prison on counts one and two and fifteen years in prison on counts three and four, all to be served concurrently. (See Exhibit A: Judgment and Sentence). Defendant timely filed a direct appeal in appellate case number 2D00-4374. On April 24, 2002, Defendant's appeal was dismissed by the Second District Court of Appeal. Hughes v. State, 818 So. 2d 511 (Fla. 2d DCA 2002) (Table).

Analysis

Pursuant to Florida Rule of Criminal Procedure 3.800(a), a court may correct a defendant's illegal sentence at any time. Fla. R. Crim. P. 3.800(a). 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. Carter v. State, 786 So. 2d 1173, 1178 (Fla. 2001). The burden is upon the party seeking relief to show why the sentence is illegal. Prieto v. State, 627 So. 2d 20, 21 (Fla. 2d DCA 1993). If correcting the error would yield the same outcome as the original sentence, then the error is considered harmless. Gibbons v. State, 543 So. 2d 860, 861 (Fla. 2d DCA 1989).

Defendant's motion presents one claim of illegal sentence. He alleges that his designation as a sexual predator is illegal because he was convicted as an aider-abettor. He alleges that the

language used in section 775.021(4)(c) does not apply to him. Specifically, that section states, in pertinent part, "... upon conviction, an *offender* shall be designated as a 'sexual predator' ..." if the felony is a capital, life, or first degree felony violation of chapter 794. Fla. Stat. § 775.21(4)(c) (1997). He claims that because he was convicted under the principal statute, he was not the "offender." He also alleges that section 777.011 modifies the crime so that it is no longer an enumerated offense within the sexual predator statute.

The Court does not agree with the Defendant's interpretation of the sexual predator statute. While the term "offender" is not defined in the relevant statute, it is clear that "offender" means a person convicted of the enumerated felony as the statute specifically states, "...upon conviction, an offender shall be designated..." Additionally, the Court does not believe the principal statute modifies or changes the conviction for sexual battery to the extent that it no longer falls within the sexual predator statute. The sexual predator statute applies to all capital, life, and first degree felony violations of chapter 794. See § 775.21(4)(c)1.a.. *Butler v. State*, 923 So. 2d 566, 567 (Fla. 4th DCA 2006) ("Before designating an offender as a "sexual predator," the sole determination to be made by the trial court is whether that person has a requisite criminal conviction. If a person has been convicted of any qualifying offense, the court must designate the offender as a "sexual predator," and he or she is subject to the Act's requirements.") (internal citations omitted). Defendant was convicted of a life felony in violation of chapter 794. (Exhibit A). Therefore, the Court finds his designation as a sexual predator to be legal.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is hereby **DENIED**.

DEFENDANT IS HEREBY NOTIFIED that he has **thirty (30)** days from the date of this order in which to file an appeal, should he choose to do so.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this 27 day of FEB, 2020. A true and correct copy of the foregoing has been furnished to the parties listed below.


Chris Heinger, Circuit Judge

Appendix C

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

SPRING TERM, 1998

AMENDED FELONY INFORMATION

CRC97-20414CFANO-I

STATE OF FLORIDA

VS.

TODD CHRISTIEN HUGHES
SPN 00393881
W/M; DOB: 08/16/73
SSN [REDACTED]

1. SEXUAL BATTERY, Life Felony
2. KIDNAPPING, 1°F (PBL)
3. ATTEMPTED SEXUAL BATTERY, 2°F
4. AGGRAVATED BATTERY, 2°F

IN THE NAME AND BY THE AUTHORITY FOR THE STATE OF FLORIDA:

BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, in and for Pinellas County, prosecuting for the State of Florida, in the said County, under oath, Information makes that

TODD CHRISTIEN HUGHES

in the County of Pinellas and State of Florida, on or between the 14th day of November and the 15th day of November, in the year of our Lord, one thousand nine hundred ninety-seven, in the County and State aforesaid, did commit a sexual battery upon [REDACTED] by placing a bottle into or in union with the anus of [REDACTED], without the consent of [REDACTED] and in the process thereof did use actual physical force likely to cause serious personal injury to the said [REDACTED]; contrary to Chapter 794.011(3)/777.011, Florida Statutes, and against the peace and dignity of the State of Florida. [N3]

COUNT TWO

And the State Attorney aforesaid, under oath as aforesaid, further information makes that TODD CHRISTIEN HUGHES, in the County of Pinellas, State of Florida, on or between the 14th day of November and the 15th day of November, in the year of our Lord, one thousand nine hundred ninety-seven, in the County and State aforesaid, did, without authority, forcibly, secretly, or by threat, kidnap, confine, abduct, or imprison another person, to-wit: [REDACTED], against the will of [REDACTED], with the intent to inflict bodily harm upon or to terrorize [REDACTED] or another person; contrary to Chapter 787.01(1)(a)(3)/777.011, Florida Statutes, and against the peace and dignity of the State of Florida. [J3]

COP NOW 9/8/00

FILED
CRIMINAL JUSTICE CENTER
98 SEP - 1 PM 4:29
*For the State of Florida
Bernie McCabe
State Attorney
Sixth Judicial Circuit
Pinellas County Court*

Appendix D

Re-Accord to Amend
Jud Credit - 3/13/08 @

___ Probation Violator
___ Community Control Violator
___ Retrial
___ Resentencing

00-291925 SPT-26-2000 8:13 AM
PINELLAS CO BK 11084 PG 158

STATE OF FLORIDA

V8

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION: FELONY

CASE NUMBER CRC 97-20414 CFANO-I

OBTS Number

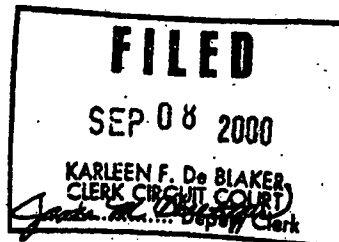
Todd Christien Hughes
Defendant

SPN: 00393881

SS#

KEN BURKE, CLERK OF COURT
PINELLAS COUNTY FLORIDA
INST# 2008071325 03/17/2008 at 02:29 PM
OFF REC BK: 16184 PG: 133-142
DocType: JUD

JUDGMENT



The Defendant, Todd Christien Hughes, being personally before this
court represented by Graig Olney, the attorney of record,
and the state represented by Kendall Jackson, and having

___ been tried and found guilty by jury/by court of the following crime(s)

___ entered a plea of guilty to the following crime(s)

☒ entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME
<u>1</u>	<u>Sexual Battery - Life Felony</u>	<u>794.011(3)/77.011</u>	<u>1°</u>
<u>2</u>	<u>Kidnapping (PBL)</u>	<u>797.01(1)(a)(3)/77.011</u>	<u>1°</u>
<u>3</u>	<u>Attempted Sexual Battery</u>	<u>794.011(3)/77.04 777.011</u>	<u>2°</u>
<u>4</u>	<u>Aggravated Battery</u>	<u>784.045/777.011</u>	<u>2°</u>

☒ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is ADJUDICATED GUILTY of the above crime(s).

☒ and pursuant to s. 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), murder (s.782.04), aggravated battery (s.784.045), carjacking (s.812.133), or home invasion (s.812.135), or any other offense specified in s. 943.325, the defendant shall be required to submit blood specimens.

_____ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD as to Count(s) _____

Sentence Deferred
Until Later Date
(Check if Applicable)

_____ The Court hereby defers imposition of sentence until _____ (Date)





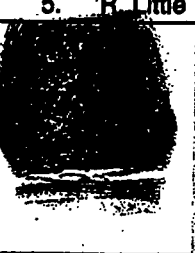




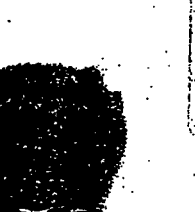
The Defendant in Open Court was advised of the right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of the right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in open court in Pinellas County, Florida this 8th day of September, 2008.

Will

JUDGE

FINGERPRINTS OF DEFENDANT

1. R. Thumb 	2. R. Index 	3. R. Middle 	4. R. Ring 	5. R. Little 
6. L. Thumb 	7. L. Index 	8. L. Middle 	9. L. Ring 	10. L. Little 

PINELLAS COUNTY FLA
OFF. REC. BK. 11064 PG. 158

Fingerprints taken by:

Deputy Nelson
(Name and Title)

I HEREBY CERTIFY that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, Todd Christian Hughes, and that they were placed thereon by the defendant in my presence in open court this day.

Will

JUDGE

SENTENCE

(As to Count 1)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Greg Olney, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

_____ and the court having on _____ deferred imposition of sentence until this date
(date)

_____ and the court having previously entered a judgment in this case on _____
now resentsences the defendant (date)

_____ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It is The Sentence Of The Court That:

☒ The defendant pay total statutory costs in the amount of \$ 408.00 imposed as lien

_____ The defendant pay attorney fees and costs of defense as determined by the Court.

_____ The defendant pay a fine of \$ _____, pursuant to 775.083, Florida Statutes; plus \$ _____
as the 5% surcharge required by 938.04, Florida Statutes.

☒ The defendant is committed to the custody of the Department of Corrections.

_____ The defendant is committed to the custody of the Sheriff of Pinellas County, Florida.

_____ The defendant is sentenced as a youthful offender in accordance with 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

_____ For a term of natural life.

☒ For a term of 25 years

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph:

_____ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered.

_____ However, after serving a period of _____ imprisonment in Department of Corrections, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

PINELLAS COUNTY FLA
OFF. REC. BX 11064 PG 160

Defendant Todd Christian Hughes Case Number CRC 97-20414 CFANO-I OBTS Number _____

SENTENCE

(As to Count 2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Greg Olney, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

_____ and the court having on _____ deferred imposition of sentence until this date
(date)

_____ and the court having previously entered a judgment in this case on _____
now resents the defendant (date)

_____ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It Is The Sentence Of The Court That:

_____ The defendant pay total statutory costs in the amount of \$ _____

_____ The defendant pay attorney fees and costs of defense as determined by the Court.

_____ The defendant pay a fine of \$ _____, pursuant to 775.083, Florida Statutes, plus \$ _____
as the 5% surcharge required by 938.04, Florida Statutes.

☒ The defendant is committed to the custody of the Department of Corrections.

_____ The defendant is committed to the custody of the Sheriff of Pinellas County, Florida.

_____ The defendant is sentenced as a youthful offender in accordance with 956.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

_____ For a term of natural life.

☒ For a term of 25 years

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph:

_____ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered.

_____ However, after serving a period of _____ imprisonment in Department of Corrections, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

PINELLAS COUNTY FLA.
OFF. REC. BK. 11064 PG. 161

Defendant

Todd Christian Hughes

Case Number

CRC 97-20414CFAND-I**SPECIAL PROVISIONS**(As to Count 2)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:PINELLAS COUNTY FLA.
OFF REC BK 11064 PG 162

Firearm	_____	It is further ordered that the 3-year minimum imprisonment provision of 775.087(2), Florida Statutes, is imposed for the sentence specified in this count.
Drug Trafficking	_____	It is further ordered that the _____ mandatory minimum imprisonment provision of 893.135(1), Florida Statutes, is imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	_____	It is further ordered that the 3-year minimum imprisonment provision of 893.13(1)(e)1, Florida Statutes, is imposed for the sentence specified in this count.
Habitual Felony Offender	_____	The defendant is adjudicated a habitual felony offender and is sentenced to an extended term in accordance with the provision of 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	_____	The defendant is adjudicated a habitual violent felony offender and is sentenced to an extended term in accordance with 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Prison Releasee Offender	_____	It is further ordered that the defendant shall be sentenced as a prison releasee offender pursuant to 775.082(9), Florida Statutes, and a minimum term of _____ years must be served before release.
Violent Career Criminal Offender	_____	The defendant is adjudicated a violent career criminal and sentenced to an extended term in accordance with 775.084(4)(c), Florida Statutes. A minimum term of _____ years must be served prior to release. The requisite findings by the Court are set forth in a separate order or stated on the record in open Court.
Law Enforcement Protection Act	_____	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with 775.0823, Florida Statutes.
Capital Offense	_____	It is further ordered that the defendant shall serve no less than 25 years in accordance with 775.082(1), Florida Statutes.
Continuing Criminal Enterprise	_____	It is further ordered that the 25-year minimum sentence provision of 893.20 Florida Statutes, is imposed for the sentence specified in this count.
Taking a Law Enforcement Officer's Firearm	_____	It is further ordered that the 3-year mandatory minimum imprisonment provision of 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Other Provisions:Consecutive/Concurrent
As To Other Counts

✓

It is further ordered that the sentence imposed for this count shall run (check one)
 _____ consecutive to _____ concurrent with the sentence set forth in count
ONE of this case.

Defendant

Todd Christian Hughes

Case Number

CRC 97-20414

OBTS Number

CFAND-I

SENTENCE

(As to Count 3)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Graig Olney, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

_____ and the court having on _____ deferred imposition of sentence until this date
(date)

_____ and the court having previously entered a judgment in this case on _____
now resentsences the defendant (date)

_____ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It Is The Sentence Of The Court That:

_____ The defendant pay total statutory costs in the amount of \$ _____

_____ The defendant pay attorney fees and costs of defense as determined by the Court.

_____ The defendant pay a fine of \$ _____, pursuant to 775.083, Florida Statutes, plus \$ _____
as the 5% surcharge required by 938.04, Florida Statutes.

☒ _____ The defendant is committed to the custody of the Department of Corrections.

_____ The defendant is committed to the custody of the Sheriff of Pinellas County, Florida.

_____ The defendant is sentenced as a youthful offender in accordance with 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

_____ For a term of natural life.

☒ _____ For a term of 15 years

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph:

_____ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered.

_____ However, after serving a period of _____ imprisonment in Department of Corrections, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

PINELLAS COUNTY FLA
OFF. REC. BK 11064 PG 169

SPECIAL PROVISIONS(As to Count 3)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:

Firearm	_____	It is further ordered that the 3-year minimum imprisonment provision of 775.087(2), Florida Statutes, is imposed for the sentence specified in this count.
Drug Trafficking	_____	It is further ordered that the _____ mandatory minimum imprisonment provision of 893.135(1), Florida Statutes, is imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	_____	It is further ordered that the 3-year minimum imprisonment provision of 893.13(1)(e)1, Florida Statutes, is imposed for the sentence specified in this count.
Habitual Felony Offender	_____	The defendant is adjudicated a habitual felony offender and is sentenced to an extended term in accordance with the provision of 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	_____	The defendant is adjudicated a habitual violent felony offender and is sentenced to an extended term in accordance with 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Prison Releasee Offender	_____	It is further ordered that the defendant shall be sentenced as a prison releasee offender pursuant to 775.082(9), Florida Statutes, and a minimum term of _____ years must be served before release.
Violent Career Criminal Offender	_____	The defendant is adjudicated a violent career criminal and sentenced to an extended term in accordance with 775.084(4)(c), Florida Statutes. A minimum term of _____ years must be served prior to release. The requisite findings by the Court are set forth in a separate order or stated on the record in open Court.
Law Enforcement Protection Act	_____	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with 775.0823, Florida Statutes.
Capital Offense	_____	It is further ordered that the defendant shall serve no less than 25 years in accordance with 775.082(1), Florida Statutes.
Continuing Criminal Enterprise	_____	It is further ordered that the 25-year minimum sentence provision of 893.20 Florida Statutes, is imposed for the sentence specified in this count.
Taking a Law Enforcement Officer's Firearm	_____	It is further ordered that the 3-year mandatory minimum imprisonment provision of 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

Other Provisions:Consecutive/Concurrent
As To Other Counts

✓ It is further ordered that the sentence imposed for this count shall run (check one)
 _____ consecutive to _____ concurrent with the sentence set forth in count
one of this case.

PINELLAS COUNTY FLA.
OFF. REC. BK 11064 PG 164

Defendant Todd Christian Hughes Case Number CRC 97-2014 CFANO OBTS Number _____

SENTENCE

(As to Count 4)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Bareq Olney, and having been adjudicated guilty, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

_____ and the court having on _____ deferred imposition of sentence until this date
(date)

_____ and the court having previously entered a judgment in this case on _____
now resents the defendant (date)

_____ and the Court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control _____

It Is The Sentence Of The Court That:

_____ The defendant pay total statutory costs in the amount of \$ _____

_____ The defendant pay attorney fees and costs of defense as determined by the Court.

_____ The defendant pay a fine of \$ _____, pursuant to 775.083, Florida Statutes, plus \$ _____
as the 5% surcharge required by 938.04, Florida Statutes.

☒ The defendant is committed to the custody of the Department of Corrections.

_____ The defendant is committed to the custody of the Sheriff of Pinellas County, Florida.

_____ The defendant is sentenced as a youthful offender in accordance with 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

_____ For a term of natural life.

☒ For a term of 15 years

_____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph:

_____ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered.

_____ However, after serving a period of _____ imprisonment in Department of Corrections, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

PINELLAS COUNTY FLA
OFF. REC. BK 11064 PG 165

SPECIAL PROVISIONS(As to Count 4)

By appropriate notation, the following provisions apply to the sentence imposed:

Mandatory/Minimum Provisions:PINELLAS COUNTY FLA.
OFF REC BK 11064 PG 168

Firearm

It is further ordered that the 3-year minimum imprisonment provision of 775.087(2), Florida Statutes, is imposed for the sentence specified in this count.

Drug Trafficking

It is further ordered that the _____ mandatory minimum imprisonment provision of 893.135(1), Florida Statutes, is imposed for the sentence specified in this count.

Controlled Substance
Within 1,000 Feet of School

It is further ordered that the 3-year minimum imprisonment provision of 893.13(1)(e)1, Florida Statutes, is imposed for the sentence specified in this count.

Habitual Felony Offender

The defendant is adjudicated a habitual felony offender and is sentenced to an extended term in accordance with the provision of 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

Habitual Violent
Felony Offender

The defendant is adjudicated a habitual violent felony offender and is sentenced to an extended term in accordance with 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Prison Releasee
Offender

It is further ordered that the defendant shall be sentenced as a prison releasee offender pursuant to 775.082(9), Florida Statutes, and a minimum term of _____ years must be served before release.

Violent Career
Criminal Offender

The defendant is adjudicated a violent career criminal and sentenced to an extended term in accordance with 775.084(4)(c), Florida Statutes. A minimum term of _____ years must be served prior to release. The requisite findings by the Court are set forth in a separate order or stated on the record in open Court.

Law Enforcement
Protection Act

It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with 775.0823, Florida Statutes.

Capital Offense

It is further ordered that the defendant shall serve no less than 25 years in accordance with 775.082(1), Florida Statutes.

Continuing
Criminal Enterprise

It is further ordered that the 25-year minimum sentence provision of 893.20 Florida Statutes, is imposed for the sentence specified in this count.

Taking a Law Enforcement Officer's Firearm

It is further ordered that the 3-year mandatory minimum imprisonment provision of 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this court.

Other Provisions:Consecutive/Concurrent
As To Other Counts

It is further ordered that the sentence imposed for this count shall run (check one)
 _____ consecutive to _____ concurrent with the sentence set forth in count
one of this case.

Defendant Todd Christian Hughes Case Number CRC 97-20414CFND-I

Other Provisions: (continued)

Jail Credit

Prison Credit

Consecutive/Concurrent
As To Other Convictions

It is further ordered that the defendant shall be allowed a total of 187 days as credit for time incarcerated before imposition of this sentence. * Amended to include an additional 2 day Jail time credit.
It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.
It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) consecutive to concurrent with the following:
(check one)
any active sentence being served
specific sentences:

It is further ordered that:

Restitution is not applicable in this case

Restitution is ordered in an amount to be determined

Restitution is ordered as follows:

Restitution is not ordered for the following reason(s):

Restitution to State:

The defendant must make payment of any debt due and owing to the state under 960.17 and 948.03(1)(g), Florida Statutes. The amount of such debt shall not exceed \$10,000 and shall be determined by the Court at a later date upon final payment by the Crimes Compensation Trust Fund on behalf of the victim.

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends Sexual Predator Finds the defendant is a

DONE AND ORDERED in open court at Clearwater, Pinellas County, Florida, this 8th day of Sept, 2000

JUDGE

Appendix E

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA**

TODD HUGHES,
Defendant,

vs.

Case No: CRC-97-20414-CFANO-I

STATE OF FLORIDA,
Plaintiff.

**MOTION FOR CORRECTION OF ILLEGAL SENTENCE,
ERRONEOUS SEXUAL PREDATOR DESIGNATION
FLORIDA RULES OF CRIMINAL PROCEDURE 3.800(a)(3)**

COMES NOW, the Defendant, Todd Hughes, *pro se*, and respectfully moves this Honorable Court for correction of an erroneous sexual predator designation pursuant to the Florida Rules of Criminal Procedure 3.800(a)(3). In support of the motion, the Defendant states the following in a question-and-answer format:

1. What are the FACT(S) that entitle you to correction of sentence?

A Fla. R. Crim. P. 3.800(a) motion to correct an illegal sentence may be used to challenge a sexual predator designation, but is limited to cases where it is apparent from the face of the record that the defendant did not meet the criteria for designation as a sexual predator.

The courts takes the view that it doesn't much matter that a sexual predator designation is not a sentence or a punishment. Under the statutory scheme set forth in section 775.21(5)(a)1, when the defendant is before the court for sentencing for a current offense, the sentencing court must make a "written finding" that the person is a sexual predator at the time of sentencing. This is, therefore, a function of the criminal court as a part of the sentencing procedure. Rule 3.800 expressly applies to any "sentencing error." We think a sentencing error is not only an error in a "sentence" but also any error that occurs as part of the sentencing process.

Declaratory judgment actions are ill-suited for challenging sexual predator designations and have proven unworkable. Saintelien v. State, 990 So.2d 494 (Fla. 2008). A defendant cannot

authorize the trial court to impose an illegal sentence, even by virtue of a plea agreement. Lee v. State, 731 So.2d 71 (Fla. 2nd DCA 1999)

If an erroneous scoresheet calculation is apparent on the face of the record, it is reviewable under Fla. R. Crim. P. 3.800(a). Thus, although scoresheet-based sentencing errors under Fla. R. Crim. P. 3.800(a) need to be capable of resolution by reference to the record, this refers to the entire written record available in the circuit court, not just to the limited record on appeal. Atwood v. State, 765 So.2d 242 (Fla. 1st DCA 2000).

In Case #: CRC97-20414CFANO-I. Mr. Hughes is charged with 794.011(3)/777.011. See Felony Information.

When an information cites a specific statute, the defendant is put on notice that he is charged with each of the elements of the offense contained in that statute. An information that references a specific section of the criminal code is sufficient to charge the defendant with committing the crime contained in that section. Calloway v. State, 37 So.3d 891 (Fla. 1st DCA 2010). (Emphasis Added)

777.011 states that whoever aids, abets, counsels, hires, or otherwise procures such offense, ... is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense. (emphasis added).

“In order to be guilty as a principal for a crime physically committed by another, one must intend that the crime be committed, and do some act to assist the other person in actually committing the crime.” Staten v. State, 519 So.2d 622 (Fla. 1988) also see Arroyo v. State, 705 So.2d 54 (Fla. 4th DCA 1997), indicating that in order to be guilty as a principal or as an aider and abettor to a crime, the Defendant must intend that the crime take place, and do some act which did or was intended to incite, cause, encourage, assist, or advise in the commission of the crime.

On the record, Mr. Hughes' attorney, "Mr. Olney". On page 5, 6 of Mr. Hughes' sentencing hearing that took place on September 8th, 2000, and the collaborating testimony of state attorney, "Mr. Davidson" on page 13 states respectively "the sexual battery in this particular case was effected by a co-defendant who introduced a bottle into the victim's anus. At the time of that occurrence my client was standing at the door, was not at all involved in that particular count or that particular event or that particular act." "... There's no evidence whatsoever that as to that, to the completed sexual battery, that my client had any active participation." State Attorney Mr. Davidson, "what the court needs to be aware of - - - and again, its been pointed out there's not been a lot of evidence showing Mr. Hughes' active participation in the actual bottle sexual battery, that he was in the doorway, that's what the witnesses will indicate." "...the other Defendants did, in fact blame Mr. Hughes as being an instigator - type in this situation. I don't have that - - those transcripts marked out for the court because, quite frankly, I don't find credible anything that the other Co-defendants said other than their admissions to the horrible things they did to the victim." This is the factual basis relied upon to convict Mr. Hughes as an aider and abettor. See Allen v. State, 876 So.2d 737, The purpose of the factual basis requirement is to insure that the facts of the case fit the offense with which the defendant is charged. The purpose of determining whether a factual basis for a plea exists is to prevent a defendant from mistakenly entering a plea to the wrong offense. Before accepting a plea of guilty or no contest, the trial court must receive in the record factual information to establish the offense to which the defendant has entered his plea.

775.21 Florida Statute (1997) has specific criteria that must be met before a person can be designated a Sexual Predator. The Sexual Predator "designation is neither a sentence or punishment" Angell v. State, 712 So.2d 1132 (Fla. 2nd DCA 1998). "The legislative intent of 775.21 is not punitive, and remedial." Collie v. State, 710 So.2d 1000 (Fla. 2nd DCA 1998).

Defendant Mr. Hughes was improperly designated a Sexual Predator. The criteria set forth in 775.21(4)(c) specifically excluded Mr. Hughes, and (4)(c)(1)(a) Florida Statute (1997) did not specifically include Mr. Hughes.

1. Mr. Hughes was not an “offender” within the term specifically used in the criteria of 775.21(4)(c), 5, and 5(a)(1) (1997) that would subject him to qualify for Sexual Predator designation.

The familiar role of statutory construction *expressio unius exclusio alterius* requires that when a law expressly describes a particular situation where something should apply, an inference must be drawn that what is not included by specific references was intended to be omitted or excluded. Prewitt Mgmt. Corp. v. Nikolits, 795 So.2d 1001 (Fla. 4th DCA 2001).

Under the *expressio unius* canon and the interchangeable inclusion *unius* canon, when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded the *expressio unius* canon is deployed to defeat an argument that a particular item or matter is included by implication within the scope of a statutory provision. Lewars v. State, 2017 Fla. App. LEXIS 6772; 42 Fla L Weekly D 109842. When a statute enumerates the things upon which it is to operate, it should be construed as excluding from its operation things of the same class or category which it does not mention Mingo v. AraHealthSrvs, inc 638 So.2d 85 (Fla. 2nd DCA 1994) (Citing James v. Dept. of Corrections, 424 So.2d 826 (Fla. 1st DCA 1982) it follows that a circuit court may not expand indefinitely the list of crimes for which the termination of parental rights is authorized in the statute by inserting a no-new-law violation task into the case plan. To approve such a reading of section 39.806 would amount to judicial legislation that is contrary to the separation of powers that characterizes our system of government. M.N. v. Dept of Childrens&FamilyServices, 51 So.3d 1224 (Fla. 2nd DCA 2011)

James, supra, the general principle of *expressio unius exclusio alterius* is a well settled rule of statutory construction that the legislature is presumed to know the existing law when it enacts a statute.

Put even simpler, “when a statute... lists the area to which it applies, it will be construed as excluding from its reach any areas not expressly listed” Siegle v. Lee City, 198 So.3d 773 (Fla. 2nd DCA 2016).

Since the legislature specifically used words of distinct and clear meaning... the courts may not invade the province of the legislature and add words which change the plain meaning of the statute. L.A.P. Appellant v. State, 62 So.3d 693 (Fla. 2nd DCA 2011).

The Court has stated, “one of the most fundamental tenets of statutory construction requires that we give statutory language its plain ordinary meaning, unless the words are defined in the Statute or by clear intent of the legislature.” Quoting Green v. State, 604 So.2d 471 (Fla. 1992).

Considering the pertinent areas of 775.21 Florida Statute (1997) as to Mr. Hughes’ case (3(a) the purpose, and intent of this statute is to designate,” Sex offenders who use physical violence” as Sexual Predators Balentine’s Law Dictionary defines violence as: physical force applied. Thus, the legislature determined that, “sex offenders who use physical violence (force) are sexual predators”. The word who (pronoun) is defined as: which person or persons. The word use /yüz/ (transitive verb) is defined as: the act or practice of using or employing something. The purpose and intention of the legislature is clear and specific in that it is the actual offenders who use physical force are Sexual Predators.

The Court has stated, “one of the most fundamental tenets of statutory construction requires that we give statutory language its plain ordinary meaning, unless the words are defined in the Statute or by clear intent of the legislature.” Quoting Green v. State, 604 So.2d 471 (Fla. 1992).

Sexual Predators are defined in 775.21(4)(c) (1997)

FOR A CURRENT OFFENSE COMMITTED ON OR AFTER OCTOBER 1, 1996, UPON CONVICTION, AN OFFENDER SHALL BE DESIGNATED AS A “SEXUAL PREDATOR” UNDER SUBSECTION (5), AND SUBJECT

**TO REGISTRATION UNDER SUBSECTION (6) AND
COMMUNITY AND PUBLIC NOTIFICATION UNDER
SUBSECTION (7) IF: 1¹. THE FELONY MEETS THE
CRITERIA OF FORMER SS. 775.22(2) AND 775.23(2),
SPECIFICALLY, THE FELONY IS: A. A CAPITAL, LIFE,
OR FIRST DEGREE FELONY VIOLATION OF CHAPTER
794 OR S. 847.0135, OR OF A SIMILAR LAW OF
ANOTHER JURISDICTION;**

Section (4)(c) states there must be a current offense committed on or after October 1, 1996, and upon conviction an offender² shall be designated a Sexual Predator if: specifically, the felony is: A life felony violation of Chapter 794 (emphasis added) meaning, the person to be designated must be within the date requirement must be charged with the qualifying offense, and upon the conviction, the offender of the qualifying offense the designation of Sexual Predator is mandatory. 775.21 (1997) also states in (5) and (5)(a) 1. It is the offender who qualifies for Sexual Predator designation. Webster's New World dictionary defines a colon as a mark of punctuation (:). Used before a long quotation, explanation, example, series, etc.

When words or terms are not defined in the statute it is acceptable to use a dictionary to define words." "Undefined words are construed in their plain and ordinary sense." See State v. Mitro, 700 So.2d 643 (Fla. 1997). "Courts may refer to a dictionary to ascertain the plain meaning intended by the term." See L.B v. State, 700 So.2d 370 (Fla. 1997)

The colons used in the criteria above, therefore, make sections (4)(c) and (4)(c)(1)(a) inclusionary of each other. Webster's New World dictionary defines specifically as: Definite; explicit. U.S. Court of Appeal (5th and 11th Circuit, Gaddis v. United States, 381 F.3d 444 have determined," specific" as: with exactness, and precision.

¹ In State v. Colley, 744 So.2d 1172 (Fla. 2nd DCA 1999) the Second District Judge Alterbernd opined that, "repealed sections 775.22 and 775.23 define the predicate offenses necessary to classify an offender as a sexual predator for offenses committed on or after October 1, 1993, and before October 1, 1995." Mr. Hughes points out the crime in question in this motion occurred in 1997 and thus 775.22 and 775.23 does not apply here, but is listed within 775.21 to continue to apply designation upon those crimes that were perpetrated between 1993 and 1995.

² The legislature's use of the specific term "offender" is a limiting term within the pertinent criteria to Mr. Hughes' case.

The familiar role of statutory construction *expressio unius exclusio alterius* requires that when a law expressly describes a particular situation where something should apply, an inference must be drawn that what is not included by specific references was intended to be omitted or excluded. Prewitt Mgmt. Corp. v. Nikolits, 795 So.2d 1001 (Fla. 4th DCA 2001).

Under the *expressio unius* canon and the interchangeable inclusion *unius* canon, when a law expressly describes the particular situation in which something should apply, an inference must be drawn that what is not included by specific reference was intended to be omitted or excluded the *expressio unius* canon is deployed to defeat an argument that a particular item or matter is included by implication within the scope of a statutory provision. Lewars v. State, 2017 Fla. App. LEXIS 6772; 42 Fla L Weekly D 109842

Legislative intent is the primary factor in construing a statute, and whenever possible that intent should be derived from the language of the statute. A statute should be construed in its entirety and within the context provided by the related statutes within the same act. Words within a statute should not be given a literal meaning if that meaning conflicts with the plain legislative intent. Under the doctrine of *noscitur a sociis* one examines the other words used within a string of concepts to derive the legislature's overall intent. Cepcot v. Department of Business and Professional Regulation, Construction Industry Licensing Board, 658 So.2d 1092 (Fla. 2nd DCA 1995).

Within the Statute's plain language 775.214(c) and (4)(c)(1)(a) the words, "offender" and, "A" fulfill the legislature's intent, and purpose of statute 775.21 to designate offenders who use physical violence in the qualifying crimes to be designated Sexual Predators.

Within Chapter 777 is, 777.011, and 777.03. As the law demonstrates Chapter 777 modifies crimes. "Chapter 777... acts in conjunction with other statutes to create criminal offenses." Johnson v. State, 716 So.2d 332 (Fla. 2nd DCA 1998). "As we said in Zopf attempted

Sexual Battery is,” a crime under section 794.011(2) as modified 783 So.2d 1151 by the attempt statute, section 777.04 Florida Statutes. “Wilcox v. State, 783 So.2d 1150 (Fla. 1st DCA 2001).

These modifiers are related in that both sections of this statute regulate aiders and abettors. See 777.03(1)(a) A charge that a defendant is an accessory after the fact requires an allegation that the defendant rendered some form of assistance to an offender with the intent that the offender avoids or escapes detection, arrest, trial, or punishment. C.W. v. State, 861 So.2d 1243 (Fla. 2nd DCA 2003) This law demonstrates the use of the word offender, and states throughout that the offender is the actual perpetrator the one who physically commits the crime where aiders are concerned.

In Wright v. State, 810 So.2d 873 (Fla. 2002) the Florida Supreme Court found an “Offender” was the perpetrator of the crime, and a Defendant/Principal as one who encourages or incites the crime, but was not one who used a mask as the offenders of the crime had. The Supreme Court found in the plain statutory language of 775.0845 (1997) Florida Statute that the language was specific, using the term, “offender” in describing who is eligible. The offender is the physical perpetrator of the qualifying offense. That Wright, charged with 777.011 aider abettor was a Defendant/Principal in the case, and not the actual offender, and as such section 775.0845 did not apply to Wright. Also see Squire v. State, 2019 LEXIS 11316 4th DCA “Vicarious liability based on principal theory will not suffice under 10/20/Life statute”.

794.011(3) is the only crime that could be used to designate Mr. Hughes a Sexual Predator, and states it is a person who commits Sexual Battery and in that process uses actual physical force. 775.21(4)(c) demonstrates it is the offender (the person who commits and uses actual physical force) that requires a mandatory designation, not the aider. Balentine’s Law Dictionary defines aider as one who ... encourages another to commit a crime. The modification of 794.011(3) with 777.011 and the face of the record submitted demonstrates Mr. Hughes (was

not one who used physical violence/force), but was convicted of encouraging another to commit the crime. See Pages 5, 6, and 13 of the sentencing hearing. September 8, 2000.

As stated above subsections .011, and .03 of Chapter 777 is in para materia, and thus the meaning of offender is clear where aiders are concerned, the doctrine of in pari materia is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Florida Legislature's intent. Florida Department of State, Division of Elections, v. Martin, 916 So.2d 763 (Fla. 2005)

One rule of statutory construction is the doctrine of in pari materia. This principle requires courts to construe statutes that relate to the same subject matter together to harmonize those statutes and give effect to legislative intent. Similarly, a statute is to be read as a consistent whole, and a court should accord meaning and harmony to all of its parts, with effect given to every clause and related provision. Anderson v. State, 87 So.3d 774 (Fla. 2012)

Mr. Hughes was convicted of a modified offense of aiding abetting sexual battery. A person convicted of the modified offense, in Mr. Hughes' case is someone who aided a qualifying offense as a bystander with intent. The legislature knows the law James, and chose the limiting term "Offender" of a life felony violation of 794 to be the qualifying criteria for designation and not a more general term. The legislature chose it to be the offender of the unmodified crime, and thus Mr. Hughes is not the offender contemplated within 775.21(4)(c), and is not within the criteria for designation. Courts of Florida are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power. J.R. v. Palmer, 175 So.3d 710 (Fla. 2015). Statutory language ought not be read in isolation but taken in context so that its meaning may be illuminated in the light of the statutory scheme of which it is a part. Bloom v. Bloom, 227 So.3d 165 (Fla. 2nd DCA 2017).

The wording of the statutory language within 775.21(4)(c) Florida Statute (1997) states the offender shall be designated if specifically the felony is A life felony violation of Chapter 794. The legislature's use of, "offender", and "A" is specific as they pertain to the specific criteria. The word "A" is specific of the offense for which designation is mandatory. Had the legislation chosen to use the term "Defendant" and "A" or "Offender" and "Any" then this would have lead to any life conviction of 794 including Defendants with the modified charge of 794.011(3)/777.011 aiding abetting, but because the statutory language is specific to, "offenders" who "specifically" have "A", (not any) life violation of 794. It specifically excludes the Defendant Mr. Hughes, that was not convicted of the unmodified offense of Sexual Battery.

In State v. Marks, 833 So.2d 249 (Fla. 4th DCA 2002), the "any" usage in statutes: The term, "any, defined" is all inclusive. Under that rule of construction, "any prosecution" would include prosecutions by means of 777.011 (1997) Florida Statute. In the alternative the usage of, "A" is specific, and exclusionary of aiders and abettors, unless it is otherwise specifically listed within the criteria of 775.21 (1997)

As demonstrated above, although a Defendant can be convicted, and punished as though he had committed the offense Statute 775.21 is not punitive. Webster's New World Dictionary defines committed as: to do or perpetrate (a crime). The fact remains, Mr. Hughes did not commit the act that could improperly be used for designation.

When words or terms are not defined in the statute it is acceptable to use a dictionary to define words." "Undefined words are construed in their plain and ordinary sense." See State v. Mitro, 700 So.2d 643 (Fla. 1997). "Courts may refer to a dictionary to ascertain the plain meaning intended by the term." See L.B v. State, 700 So.2d 370 (Fla. 1997)

The term offender in the context of pertinent statutes listed is specific and limiting. It is what the legislature chose to put into the plain language of statute 775.21. As to Mr. Hughes case 777.011 in harmony and in para materia with 777.03, and Florida Supreme Court decision in

Wright shows the offender is the actual perpetrator of the crime. To find the specific criteria within 775.21 was by anyone else other than the offender would nullify the legislature's usage of the term "offender" and abrogate the power of the legislature. The limiting term offender is specific of who mandatory Sexual Predator designation applies. Not "any person" that has a crime committed on or after October 1, 1996 upon conviction of specifically a life felony of 794.

If any person other than the offender is designated this nullifies the legislature's use of the term, "offender" in the plain statutory language and is an abrogation of legislative power.

Our courts are to apply statutes as they are written not to add or take away from it making words or parts of the statute a nullity.

"The court is without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications." State v. Purdy, 252 So.3d 723 (Fla. 2018) "to do so would be an abrogation of legislative power." Holly v. Auld, 450 So.2d 217 (Fla. 1984). "The court is not at liberty to add a statute words that the legislature itself has not used in drafting that statute and a matter that is not covered by a statute is to be treated as intentionally not covered." Gordon v. Fishman, 253 So.3d 1218 (Fla. 2nd DCA 2018). Add LAP and Kaisischk 991 803

Courts cannot judicially alter the wording of statutes. A courts function is to interpret statutes as they are written and give effect to each word in the statute. State v. Lewars, 259 So.3d 793 (Fla. 2018).

Although the Court is provided authority to make a written finding at the time of sentencing, it must establish the specific criteria.

The Court failed to establish the statutory criteria it was relying on to make a written finding Mr. Hughes was a Sexual Predator "if statutory criteria are established." See Kelly, 795 So.2d 135. The only reference to criteria is on page 26, 27 of the sentencing transcript where, in addressing Mr. Hughes counsel, Mr. Olney, Judge Shames asks Mr. Olney if he has discussed

with Mr. Hughes that, ... “by virtue of the offenses he’s pleading”... “Mr. Hughes will be designated a Sexual Predator.” The court failed to base designation on statutory criteria departing the essential requirement of law by not basing on the criteria State v. Woods, 969 So.2d 408 (Fla. 1st DCA 2007) referenced teveres. See Wisniewski, 805 So.2d 901 (Fla. 2nd DCA 2001) / Judge failed to make specific finding that he meets each of the criteria Washington v. State, 610 So.2d 517 (Fla. 1st DCA 1992) thereby extending, and modifying the statute by designating Mr. Hughes using “offenses” that were not established. i.e. unspecified “offenses”, and in doing so has abrogated the power of the legislation. J.R. v. Palmer, 175 So.3d 710 (Fla. 2015).

As demonstrated in this motion, Mr. Hughes is not the “offender” in regards to the specific criteria in (4)(c), and designation should not apply, as well the court failed to establish any specific statutory criteria, and failed to base designation on that criteria before making a written finding Mr. Hughes was a Sexual Predator.

If left to stand the court will have extended and modified the reach of 775.21 (1997) and abrogated the power of the legislature.

For reasons within this motion Sexual Predator designation for Mr. Hughes is illegal/unconstitutional, and must be removed.

2. Mr. Hughes was charged and convicted of 794.011(3)/777.011 Florida Statute (1997) aider abettor. This is a modified crime and this crime was not specifically enumerated within the continuing criteria requirement of (4)(c)(1)(a). In Case #: CRC97-20414CFANO-I. Mr. Hughes is charged with 794.011(3)/777.011. See Felony Information.

When an information cites a specific statute, the defendant is put on notice that he is charged with each of the elements of the offense contained in that statute. An information that references a specific section of the criminal code is sufficient to charge the defendant with committing the crime contained in that section. Calloway v. State, 37 So.3d 891 (Fla. 1st DCA 2010). (Emphasis Added)

777.011 states that whoever aids, abets, counsels, hires, or otherwise procures such offense, ... is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense. (emphasis added).

“In order to be guilty as a principal for a crime physically committed by another, one must intend that the crime be committed, and do some act to assist the other person in actually committing the crime.” Staten v. State, 519 So.2d 622 (Fla. 1988) also see Arroyo v. State, 705 So.2d 54 (Fla. 4th DCA 1997), indicating that in order to be guilty as a principal or as an aider and abettor to a crime, the Defendant must intend that the crime take place, and do some act which did or was intended to incite, cause, encourage, assist, or advise in the commission of the crime.

Where a statute specifically enumerates those persons to be covered it excludes from it those people not expressly mentioned. When a Statute is drafted in such a manner as to clearly convey a specific meaning, the only proper function of the court is to effectuate this legislative intent. Zopf v. Singletary, 686 So.2d 680 (Fla. 1st DCA 1996). If one subject is specifically named in a contract, or if several subjects of a large class are specifically enumerated, and there

are no general words to show that other subjects of that class are included, it may be reasonably inferred that the subjects not specifically named were intended to be excluded. Espinosa v. State, 688 So.2d 1016 (Fla. 3rd DCA 1997). (emphasis added)

In modification of 794.011(3) with 777.011 (1997) case law states that, “Chapter 777... acts in conjunction with other statutes to create criminal offenses.” Johnson v. State, 716 So.2d 332 (Fla. 2nd DCA 1998). “As we said in Zopf attempted Sexual Battery is,” a crime under section 794.011(2) as modified 783 So.2d 1151 by the attempt statute, section 777.04 Florida Statutes. “Wilcox v. State, 783 So.2d 1150 (Fla. 1st DCA 2001). Chapter 777 modifies the crime, and the required elements i.e, “physical action requirements” of a Defendant to find that person guilty of aiding, that may not have physically participated in the qualifying offense, and may have aided by counseling, hiring, or otherwise procuring such offense. Coupled with the rest of 777.011 (1997) he or she may or may not be actually or constructively present at the commission of such offense. Which may include a phone call, text message, written mail, voice mail etc.

Establishing criminal responsibility upon actions by the offender 777.011 does not transfer over to 775.21 for Sexual Predator designation without specific reference, and or enumeration within 775.21. To do so would render the term “offender” used in (4)(c) meaningless, as it would then be ambiguous as to who the legislature chose it to pertain to. It would also change the meaning of the term, “A” in (4)(1)(a) to mean “any” life felony of 794 as a qualifier for Sexual Predator designation. Thus, nullifying the words, “offender”, and “A”. This would extend the reach of 775.21 beyond its expressed language. _____ The plain and specific statutory language within 775.21 Florida Statute (1997) does not enumerate or include the 777.011 modified offense as a qualifier.

Sexual Predators are defined in 775.21(4)(c) (1997)

FOR A CURRENT OFFENSE COMMITTED ON OR AFTER OCTOBER 1, 1996, UPON CONVICTION, AN OFFENDER SHALL BE DESIGNATED AS A “SEXUAL PREDATOR” UNDER SUBSECTION (5), AND SUBJECT

**TO REGISTRATION UNDER SUBSECTION (6) AND
COMMUNITY AND PUBLIC NOTIFICATION UNDER
SUBSECTION (7) IF: 1³. THE FELONY MEETS THE
CRITERIA OF FORMER SS. 775.22(2) AND 775.23(2),
SPECIFICALLY, THE FELONY IS: A. A CAPITAL, LIFE,
OR FIRST DEGREE FELONY VIOLATION OF CHAPTER
794 OR S. 847.0135, OR OF A SIMILAR LAW OF
ANOTHER JURISDICTION;**

Although the Court is provided authority to make a written finding at the time of sentencing, it must establish the specific criteria.

The Court failed to establish the statutory criteria it was relying on to make a written finding Mr. Hughes was a Sexual Predator “if statutory criteria are established.” See Kelly, 795 So.2d 135. The only reference to criteria is on page 26, 27 of the sentencing transcript where, in addressing Mr. Hughes counsel, Mr. Olney, Judge Shames asks Mr. Olney if he has discussed with Mr. Hughes that, ... “by virtue of the offenses he’s pleading”... “Mr. Hughes will be designated a Sexual Predator.” The court failed to base designation on statutory criteria departing the essential requirement of law by not basing on the criteria State v. Woods, 969 So.2d 408 (Fla. 1st DCA 2007) referenced teveres. See Wisniewski, 805 So.2d 901 (Fla. 2nd DCA 2001) / Judge failed to make specific finding that he meets each of the criteria Washington v. State, 610 So.2d 517 (Fla. 1st DCA 1992) the sentencing court failed to establish through the specific criteria of 775..21 that Mr. Hughes was within the statutory language, specifically where 777.011 modified crimes are not listed within 775.21 for designation as a Sexual Predator. Thereby extending, and modifying the statute by designating Mr. Hughes using “offenses” that were not established. i.e. unspecified “offenses”, and in doing so has abrogated the power of the legislation. J.R. v. Palmer, 175 So.3d 710 (Fla. 2015).

3 In State v. Colley, 744 So.2d 1172 (Fla. 2nd DCA 1999) the Second District Judge Alterbernd opined that, “repealed sections 775.22 and 775.23 define the predicate offenses necessary to classify an offender as a sexual predator for offenses committed on or after October 1, 1993, and before October 1, 1995.” Mr. Hughes points out the crime in question in this motion occurred in 1997 and thus 775.22 and 775.23 does not apply here, but is listed within 775.21 to continue to apply designation upon those crimes that were perpetrated between 1993 and 1995.

The modified crime of aider abetting Sexual Battery 794.011(3)/777.011 in regards to the specific criteria in 4(c)(1)(a) is not listed and law within this motion states it is to be excluded. As well the court failed to establish any specific statutory criteria, and failed to base designation on that criteria before making a written finding Mr. Hughes was a Sexual Predator.

If left to stand the court will have extended and modified the reach of 775.21 (1997) and abrogated the power of the legislature.

For reasons within this motion Sexual Predator designation for Mr. Hughes is illegal/unconstitutional, and must be removed.

Mr. Hughes does not fall within the terms of Florida Statute 775.21 (1997). It is not enough that he was convicted of aiding abetting sexual battery. Nor is it enough that the crime bears some relationship to sexual battery or Sexual Predator designation “by virtue of the offenses” according to Judge Shames during the plea hearing on September 8th, 2000. In order to designate Mr. Hughes a sexual predator, the conviction must be of the offender, and must be a specified offense within terms of the specific statutory language. 775.21 (1997) fails to do so in regards as to Mr. Hughes’s case.

An example of statutes that specifically pertain to 777.011 aiders abettors can be found in Florida Statutes 112.3173 (2)(e)1. Within the case of Warshaw v. City of Miami Firefighters, 885 So.2d 892 (Fla. 3rd DCA 2004) as in this case, “to the extent that there is any doubt about whether Defendant’s crime is a statutorily, “specified offense” that doubt must be resolved in favor of the Defendant.

(Rule of Lenity) With respect to criminal statutes, one of the most fundamental principles of Florida law is that penal statutes must be strictly construed according to their letter. In fact, the Florida Legislature has specifically codified this principle of lenity in § 775.021(1), Fla. Stat. (2002). This principle ultimately rests on the due process requirement that criminal statutes must say with some precision exactly what is prohibited. Thus, when criminal statutes are subject to

competing, albeit reasonable, interpretations, they must be strictly construed most favorably to the accused. § 775.021(1), Fla. Stat. (2002). Polite v. State, 973 So.2d 1107 (Fla. 2003).

Rule of Lenity “In Florida, the rule is not just an interpretive tool but a statutory directive. See 775.021(1) Kasischke v. State, 991 So.2d 803 (Fla. 2008).

“We reject [buyer’s] argument that the rule of lenity can be applied only in a criminal case. The text of a statute that establishes basis for both civil liability and criminal liability cannot have one meaning in civil cases and another meaning in criminal cases. As the U.S. Supreme Court has recognized, such statutes must be interpreted, “consistently whether we encounter their application in a criminal or non criminal context. Leocal v. Ashcroft, 543 U.S. 1, 160 L Ed 2d 271, 125 S Ct 377 (Fla. 2004). NorthCarillon, LLC v. CRC 603, LLC, et. al., 135 So.3d 274 (Fla. 2014).

CONCLUSION

The legislation has expressly described, “sex offenders who use physical violence”, as criminal conduct where sexual predator designation should apply.’ The criterion where Mr. Hughes is concerned is located in 775.21(4)(c) (1997) coupled with the continuation of the criterion by a colon (:) in Section (4)(c)(1)(a). Demonstrates it is, “offenders” with “A” life violation of 794 that designation should apply. Mr. Hughes was convicted of 794.011(3)/777.011 aider abettor (aiding a sexual battery with force, without physical participation.). In this charge Mr. Hughes is not an “offender” that used physical force (violence). Mr. Hughes, a Defendant, was not included within the pertinent legislative intent, nor by specific reference in the criterion of (4)(c), and (4)(c)(1)(a) of 775.21, and is intended to be excluded.

Mr. Hughes was charged and convicted of Florida Statute 794.011/777.011. Section 777 Florida Statute are modifiers. As the record indicates Mr. Hughes aided abetted as a bystander. (Did not physically participate in the offense) the elements of which is necessary to convict an aider abettor differs from actual perpetration, and as such when Florida Statute 775.21 enumerates offenses it is to operate in this case a life felony of 794 (not any life felony of 794) emphasis added. even though the crime may be of the same class or category the statute does not indicate 777.011 aider abettor, and law cited within this motion demonstrates Mr. Hughes must be excluded from its operation for these two reasons supra, Sexual Predator designation must be removed.

Lastly, the court failed to establish the statutory criteria it is relying on to make a written finding that Mr. Hughes was a Sexual Predator. The court failed to base the designation on any specific statutory criteria, thus departing the essential requirement of law in not basing on the criteria. Mr. Hughes does not fall under the specific criteria for the reasons expressed in this motion because to find Mr. Hughes a Sexual Predator extends and modifies the statute specific criteria in designating 775.21 (1997).

2. Where in the court's record is it demonstrated that you are entitled to the correction of erroneous sexual predator designation? In the Felony Information of CRC97-20414CFANO-I, and the sentencing transcripts of September 8th, 2000 and all related trial transcripts within co-defendants cases.


3. Is this the first motion you have filed requesting this correction of sentence or removal of an erroneous sexual predator designation? No.

If you answered NO, how many prior motions have you filed? What was the claim in each motion? One. The claim was that Mr. Hughes should have been designated under the 2000 version of 775.21 and that designation was illegal.

As to EACH motion, what was the result? Per Curiam, Affirmed. Hughes v. State, 228 So.3d 562 2D16-4614. Lower court was proper in that 775.21 (1997) applies to Mr. Hughes.

4. What is the correct sentence or designation that you are requesting in this motion? Removal of designation.

5. Under penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have a reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the court. I further certify that I understand English.



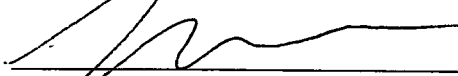
Todd Hughes DC#
Suwannee Correctional Institution Annex
5964 U.S. Highway 90
Live Oak, Florida 32060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been placed into the hands of an institutional official for the purposes of mailing, via U.S. Mail to, on this 2 day of Nov., 2010, to: OFFICE OF THE STATE ATTORNEY, 14250 49TH STREET N, CLEARWATER, FL 33762.



Respectfully Submitted,



Todd Hughes DC#
Suwannee Correctional Institution Annex
5964 U.S. Highway 90
Live Oak, Florida 32060

Appendix F

1 IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA

2 CIRCUIT CRIMINAL NO. 97-20506-CFANO-I

3
4
5 STATE OF FLORIDA

6 vs.

7 JOHN GREGORY WOODS,

8 Defendant.

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FILED
CRIMINAL JUSTICE CENTER
MAY 19 PM 3:48
HONORABLE PHILIP FEDERICO
CIRCUIT JUDGE
(VOLUME II)

12 PROCEEDINGS: JURY TRIAL.

13 BEFORE: Honorable Philip Federico,
14 Circuit Judge.

15 DATE: August 26, 1998.

16 PLACE: Courtroom I,
17 Criminal Justice Center,
18 5100 144th Avenue North,
19 Clearwater, Florida 34620.

20 REPORTED BY: Robin S. McCormick, RPR,
21 Court Reporter.

22
23
24 KANABAY COURT REPORTERS
ST. PETERSBURG, CLEARWATER - 821-3320
25 TAMPA - 224-9500

KANABAY COURT REPORTERS

1 A. Yes.

2 Q. And what did you see in the room?

3 A. John and Eric and Dean.

4 Q. Okay. Could you make out what Dean looked
5 like now?

6 A. He was a little guy. I could tell that.

7 Q. Okay,

8 A. But other than that, nothing really.

9 Q. Okay. What did you start to see happen?

10 A. Well, they started beating up on him.

11 Q. When you say "they", who are you referring
12 to?

13 A. Eric and John.

14 Q. What is Todd doing?

15 A. He was standing in the doorway with me.

16 Q. Is Todd saying anything?

17 A. No, not that I remember.

18 Q. And when you say beating on, what did you
19 actually see take place by John?

20 A. Well, they had all beat on the guy and hit
21 him, but John was the one that had committed the sexual
22 acts.

23 Q. Okay. Before we get to that, what kind of
24 beating did you see take place?

25 A. All different kinds. They punched him. They

1 kicked him. They bit him.

2 Q. Did you see John punch him?

3 A. Yes.

4 Q. More than once?

5 A. I couldn't say how many times.

6 Q. More than once?

7 A. I would say so, yes.

8 Q. Did you see John kick Dean?

9 A. No, I can't say I seen him kick him.

10 Q. Who did you see kick Dean?

11 A. I know that Eric had kicked him.

12 Q. Did you see John bite Dean?

13 A. Yes.

14 Q. More than once?

15 A. I believe twice.

16 Q. And where did you see him bite him?

17 A. In the butt.

18 Q. In the butt?

19 A. Yes.

20 Q. Okay. And where was Todd when this was going
21 on?

22 A. He was in the doorway with me.

23 Q. At any time did you see Todd direct John to
24 do any of this stuff?

25 A. No.

REPORTER'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Jennifer Fleischer, RPR, certify that
I was authorized to and did stenographically
report the foregoing proceedings and that the
transcript is a true and complete record of my
stenographic notes.

DATED this 15th day of September, 2000.


JENNIFER FLEISCHER, RPR

Appendix G



ERIK R. MATHENEY
PARTNER
Shutts & Bowen LLP
4301 W. Boy Scout Boulevard
Suite 300
Tampa, Florida 33607
DIRECT (813) 227-8123
FAX (813) 227-8223
EMAIL EMatheney@shutts.com

December 21, 2015

Mr. Todd Hughes DC# 166098
Liberty Correctional Institute
11064 NW Dempsey Barron Road
Bristol, FL 32321

Dear Mr. Hughes:

The Attorney/Consumer Assistance Program of the Florida Bar has requested that I contact you regarding a complaint you filed in October 2015, which concerned an investigation at the State Attorney's Office for the Sixth Judicial Circuit back in December 1997. As this investigation took place over 18 years ago, I do not remember any of the details of the investigation. As such, I do not have any information about this investigation, nor do I have a recollection of the facts or any files or material related to this investigation. The notes contained on Exhibit B contain my handwriting and what I believe to be Mr. William Loughery's handwriting. While I do not remember why I made that notation, I believe my notes are meant to indicate to Mr. Loughery, who was my division director at the time, that I had initially suggested that no charges should be filed against you in this matter, but upon consultation with my supervisor Kendall Davidson, concluded that charges should be filed against you as well as John Woods and Eric Anderson.

As I mentioned, I do not remember the details of this investigation, so I cannot tell you for certain how the testimony was memorialized, but in most instances a witness provided testimony to me in person, which I then summarized via dictation. I do not have a copy of any of my dictation tapes and am unsure if that material is still within the possession of the State

December 21, 2015

Page 2

Attorney's Office. I believe this answers your questions and it is my best attempts to recall the details of this investigation.

Sincerely,

Shutts & Bowen LLP

A handwritten signature in black ink, appearing to read "E.R. Matheney".

Erik R. Matheney

ERM:lmw

1

SYNOPSIS

INVEST: 12/01 I/S P DICTATED: 12/05 TRANS'D: 12/06/97

ATT/DIV: E. MATHENEY-I
IPO: Paulette Wanchik

WORK TYPE: 99
CASE #: 19720414
JOB #: 1569

DEFENDANTS' NAMES: TODD HUGHES
W/M 8/16/73

JOHN WOODS
W/M 12/15/70

ERIC ANDERSON
W/M 7/12/74

OFFENSE: SEX BATT, KIDNAPPING, ATT SEX BATT, AGG BATT

ARREST DATE: 11/16/97

WITNESSES APPEARING AND SWORN IN:

Det. Corbet, SPPD
Det. Nave, SPPD
Det. Schmidt, SPPD

RECOMMENDATION:

WOODS and ANDERSON file N3

- 1-
- 2- by placing a bottle into or in union with the anus of

Also file J2 for them

- 1-
- 2- Agg Battery

Also file Attempted N3 for them

- 1-
- 2- by placing the penis of (DEFENDANT) into or in union with the mouth of

File B6

- 1-
- 2- his

File same Counts 2 - 4 for TODD HUGHES. We want to No Info the Sex Batt for TODD HUGHES: Given the testimony of the victim, who cannot say that TODD HUGHES participated in the actual Sexual Battery and only remembers two people being present. Also, given the post Miranda statements of CO-DEFENDANTS WOODS and ANDERSON, the State does not feel it can successfully prosecute this DEFENDANT for that charge. However, the State will be proceeding with Attempted Sexual Battery, Kidnapping and Aggravated Battery charges against TODD HUGHES.

12/24
Ed

You rec. samp
no info. Saw but -
what's story?
tl

Take to know
to be soil press
hand up. Saw report
for 12/30.