

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CAIN BURNS FRANCIS MCKEN - PETITIONER
vs.
STATE OF FLORIDA - RESPONDENT

APPENDIX



Cain Burns Francis McKen DC#540632
Desoto Correctional Institution Annex
13617 S.E. Highway 70
Arcadia, Florida 341266

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

Opinion filed September 30, 2020.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Sarasota County; Debra Johnes Riva, Judge.

Cavin Burns Francis McKen, pro se.

PER CURIAM.

Affirmed.

VILLANTI, ATKINSON, and SMITH, JJ., Concur.

APPENDIX B

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO: 2017-CF-005611 NC

CAVIN McKEN,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

This matter is before the Court on the Defendant's *pro se* Motion to Correct Illegal Sentence, filed December 16, 2019, pursuant to Fla. R. Crim. P. 3.800(a). The Court has carefully reviewed Defendant's motion, the court file, the applicable law, and is otherwise duly advised of the premises.

On August 15, 2017, Defendant was charged by information with nineteen counts of Possession of Child Pornography, in violation of §§ 827.071(5) and 775.0847, Fla. Stat. (2016). On December 1, 2017, Defendant entered a plea of *nolo contendere* to all counts, and pursuant to a negotiated plea agreement, was sentenced as follows:

Counts 1 – 6: Fifteen (15) years in the Department of Corrections, all to run concurrently with each other.

Counts 7 - 12: Ten (10) years in the Department of Corrections, all to run concurrently with each other, but consecutive to the prison sentence for Counts 1 – 6, and followed by five (5) years of Sex Offender probation.

Counts 13 – 19: Fifteen (15) years of Sex Offender probation, all to run concurrently with each other, but consecutive to the five (5) years of Sex Offender probation for Counts 7 – 12.

Defendant was also designated a Sex Offender, by Order dated December 1, 2017. Defendant filed a direct appeal of his judgment and sentence, which were affirmed, *per curiam*, by the Second District Court of Appeal in a mandate issued July 29, 2019. *McKen v. State*, 275 So. 3d 1204 (Fla. 2d DCA 2019) (Table).

In the instant motion, Defendant alleges that his designation as a Sexual Offender is illegal. Defendant cites to § 943.0435, Fla. Stat. (2016), which provides the definition of a "Sexual Offender" for the purpose of determining who is required to register with the Florida Department

of Law Enforcement. Defendant claims that he “was declared a Sexual Offender without the State providing a history inclusive of the Defendant being “released” from a sanction, contrary to Florida Statute.” Defendant goes on to state that because a “Sexual Offender” is defined as a person who has been both convicted of a qualifying offense and released on or after October 1, 1997 from the sanction for conviction of a qualifying offense, he does not qualify under the statute. Defendant claims that there are “no prior offenses or convictions or criminal episodes and the scoresheet used for sentencing showing no prior crimes committed,” and that “[t]he Court need look no further than the scoresheet which was agreed to by both parties to be correct, and accepted by the Court”¹ in order to find the Defendant’s designation as a Sexual Offender to be illegal. Defendant specifically claims that “The scoresheet shows no previous conviction of any qualifying offense in the Defendant’s past. This fact alone proves it to be obvious that the Defendant has not been RELEASED on or after October 1, 1997 from the sanction imposed for a conviction on a qualifying offense.” (Emphasis in original).

Defendant is correct in his assertion that a motion under Fla. R. Crim. P. 3.800(a) is the proper vehicle through which to challenge a sexual predator designation, but only when it is apparent from the face of the record that the criteria for sexual predator designation were not met. *Breitberg v. State*, 14 So. 3d 1253 (Fla. 4th DCA 2009). However, the record in this case conclusively refutes Defendant’s claim.

The Court has examined the Criminal Punishment Code Scoresheet in the record, and finds that it contains a prior conviction of Sexual Battery, in violation of § 794.011(5), Fla. Stat. This is an offense that is included in § 943.0435(1)(a)1a(I) as a qualifying offense for designation as a Sexual Offender. Moreover, the transcript of the plea colloquy reveals that Defendant reviewed the scoresheet, agreed that it was accurate, and when the Court discussed Defendant’s prior conviction of sexual battery, Defendant made no objection or statement that such a prior conviction did not occur. To the extent that Defendant may be attempting to argue that he was convicted of sexual battery but not released from the sanctions imposed, such an argument is inherently incredible. Defendant was living freely at his residence in North Port when arrested for the charges that led to the instant conviction.

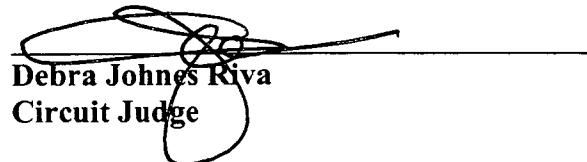
It is, accordingly

¹ Defendant appears to have intended to attach the scoresheet as “Exhibit A,” but no such attachment was filed with Defendant’s motion.

ORDERED AND ADJUDGED that Defendant's Motion to Correct Illegal Sentence is **DENIED**. Defendant has thirty (30) days from the rendition of this order within which to file an appeal.

DONE AND ORDERED in Chambers in Sarasota, Sarasota County, Florida, on this

19 day of December 2019.



Debra Johnes Riva
Circuit Judge

Attachments to Order:

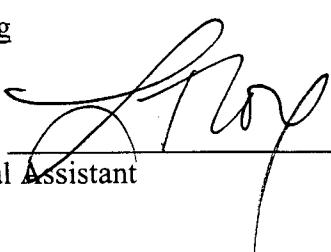
- A. Amended Information, filed August 15, 2017
- B. Acknowledgment and Waiver of Rights, filed December 1, 2017
- C. Criminal Punishment Code Scoresheet, filed December 1, 2017
- D. Sexual Offender Designation Order, filed December 4, 2017
- E. Judgment, filed December 6, 2017
- F. Sentence, filed December 6, 2017
- G. Transcript of Plea Colloquy, filed January 18, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of December 2019, copies of the foregoing Order were furnished by U.S. Mail/hand delivery and/or electronic mail to:

Cavin McKen, DC # S40632, DeSoto Correctional Institution Annex, 13617 S.E. Highway 70, Arcadia, Florida 34266-7800

Office of the State Attorney, saorounds@sao12.org



By:
Judicial Assistant

APPENDIX C

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

October 26, 2020

CASE NO.: 2D20-0263
L.T. No.: 2017-CF-5611-NC

CAVIN BURNS FRANCIS MC KEN

v. STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

As this court issued a corrected opinion that reflects the appeal is from the Circuit Court for Sarasota County, points one, two, and three of the appellant's motion for rehearing are denied as moot. Points four through eleven are denied. Point twelve of the appellant's motion for rehearing is treated as a motion for written opinion and is denied.

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

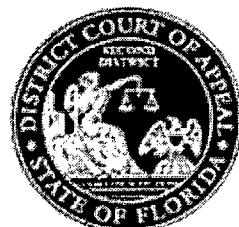
Served:

ATTORNEY GENERAL, TAMPA
CAVIN BURNS FRANCIS MC KEN

KATHERINE COOMBS CLINE, A.A.G.
KAREN E. RUSHING, CLERK

ag

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk



Clerk of Court

Supreme Court of the United States

One First St. N.E.

Washington, DC 20543

PROVIDED TO DESOTO C.I.

3-25-2021 FOR MAILING

IMMEDIATE INITIALS

OFFICER INITIALS CM

R.E.: Petition for Writ of Certiorari.

Dear Clerk:

As ordered by you, I have corrected the deficiency of the petition filed January 21, 2021. Your order was dated February 8, 2021. Therefore this petition is timely filed.

Respectfully submitted,


Casin F. McKen DC# 540632

RECEIVED

APR - 1 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.