

No.

IN THE
SUPREME COURT OF THE UNITED STATES

RAUL VASQUEZ — PETITIONER

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

APPENDIX TO PETITION FOR WRIT OF
CERTIORARI

Raul Vasquez DC# T08246
(YOUR NAME)

U.C.I., P.O. Box 1000
(ADDRESS)

Raiford, Florida, 32083
(CITY, STATE, ZIP CODE)

N/A
(PHONE NUMBER)

TABLE OF CONTEXT

PAGE NUMBER(9)

APPENDIX A - FINAL ORDER

1-2

APPENDIX B - LOWER TRIAL COURT'S DENIAL
AND ATTACHMENTS

1-114

APPENDIX C - CASE PROGRESS REPORT

1

APPENDIX "A"

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RAUL ROY VASQUEZ,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2509

January 19, 2022

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Barbara Twine Thomas, Judge.

PER CURIAM.

Affirmed.

KHOUZAM, ATKINSON, and STARGEL, JJ., Concur.

Opinion subject to revision prior to official publication.

APPENDIX-'A'-1

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

October 07, 2021

CASE NO.: 2D21-2509
L.T. No.: 97-CF-5393-A

RAUL ROY VASQUEZ

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

In light of both the sworn allegations in appellant's response received October 4, 2021, and the prison mail log and other documents attached to the response, this court's order to show cause dated September 17, 2021, is discharged and appellant's certified notice of appeal is treated as timely filed.

Appellant may file an optional initial brief which complies with Florida Rule of Appellate Procedure 9.210(a) and (b) within 60 days from the date of this order.

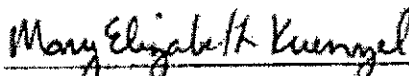
I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

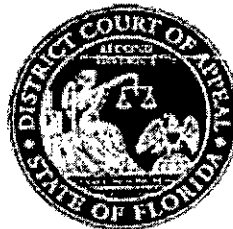
Served:

ATTORNEY GENERAL, TAMPA
RAUL ROY VASQUEZ

C. SUZANNE BECHARD, A.A.G.
CINDY STUART, CLERK

lb


Mary Elizabeth Kuenzel
Clerk



APPENDIX - 'A' - 2

APPENDIX "B"

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 97-CF-005393

v.

RAUL VASQUEZ,
Defendant.

DIVISION: A

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE
PER 3.800(A)

THIS MATTER is before the Court on Defendant's *pro se* "Motion to Correct Illegal Sentence per 3.800(a)," filed on November 5, 2020. After reviewing the Defendant's motion, the court file, and the record, the Court finds as follows:

In case 97-CF-005393, Defendant pleaded guilty pursuant to a negotiated plea agreement to attempted sexual battery (count one), attempted sexual battery (victim less than 12) (count two), and lewd and lascivious act (on child) (count three). See Plea Form, Judgment and Sentence attached. The State *nolle prossed* count four. See Judgment and Sentence, attached. The Court sentenced Defendant to fifteen (15) years in prison followed by five (5) years of probation on counts one and two, and to fifteen (15) years in prison on count three, with all counts to run concurrent with each other *Id.* Defendant did not appeal the judgments or sentences.

Subsequently, Defendant filed a Rule 3.850 motion alleging ineffective assistance of counsel, which the Court denied. See April 20, 1998 Order (██████████), attached. The Second District Court of Appeal reversed the Court's denial and remanded for the Court to address the claim. See July 30, 1998, Mandate, attached. On remand, the trial court denied Defendant's ineffective assistance of counsel claim, but allowed Defendant to withdraw his July 21, 1997, plea. See October 20, 1998, Transcript, attached.

APPENDIX - 'B' - 1

On February 23, 1999, a jury found Defendant guilty of Sexual Battery (victim less than 12) (count one) and two counts of Lewd and Lascivious Act (on child) (counts three and four). *See* Verdict Form, attached. On March 3, 1999, the Court sentenced Defendant to life in prison on count one and to seven (7) years in prison on counts three and four, with all counts to run concurrent with each other. *See* Amended Judgment and Sentence, attached. The Second District Court of Appeal affirmed the convictions and sentences. *See Vasquez v. State*, 767 So. 2d 1219 (Fla. 2d DCA 2000).

In his motion, Defendant alleges he "was not legally convicted and thus he does not meet the criteria for designation as a sexual predator." *See* Motion to Correct Illegal Sentence per 3.800(a), attached. Defendant alleges that he was not lawfully convicted because the trial court lacked jurisdiction to allow him to withdraw his plea. *Id.* Defendant argues that because the trial court "lacked jurisdiction to grant Defendant's oral motion to withdraw his plea because of the thirty day time period all proceeding [sic] following a void order are also a nullity and void." *Id.* Defendant argues that due to this lack of jurisdiction, he does not meet the criteria for designation as a sexual predator, and requests that the Court grant his 3.800(a) motion and enter an order removing his sexual predator designation. *Id.*

After reviewing the motion, the court file, and the record, the Court finds that Defendant's motion does not warrant relief. Florida Rule of Criminal Procedure 3.800(a) is "reserved for a narrow category of cases in which the sentence can be described as truly 'illegal' as a matter of law." *Judge v. State*, 596 So. 2d 73, 77 (Fla. 2d DCA 1991). A rule 3.800(a) motion "is limited to claims that a sentence itself is illegal, without regard to the underlying conviction." *Coughlin v. State*, 932 So. 2d 1224, 1226 (Fla. 2d DCA 2006). Defendant's claim that the court was without jurisdiction to allow him to withdraw his plea relates to his underlying conviction, and therefore,

this claim is not cognizable under 3.800(a). Therefore, the Court finds that Defendant is not entitled to relief.

Further, the Court notes that while Defendant has not previously raised this issue in a 3.800(a) motion, Defendant has previously raised the same or substantially similar allegations in other prior motions. Specifically, the Court finds that its August 14, 2018, order addresses Defendant's February 28, 2018, "Motion for Postconviction Relief Trial Court's Lack of Jurisdiction in All Forms," in which Defendant argues that "[n]owhere did the Second DCA grant the lower Court jurisdiction to rule on the withdrawal of Defendant's plea because the State could not honor the plea." See August 14, 2018 Order (██████████), attached. The Court determined those allegations were untimely and must be denied. *Id.* Defendant appealed that order and the Second District Court of Appeal affirmed the Court's order. See October 21, 2019, Mandate, attached. Defendant raised similar allegations in his December 2, 2019, "Petition for Declaratory Judgment", which the Court also denied. See February 26, 2020, Order (██████████), attached.

The Court warns Defendant that the filing of successive motions may be deemed frivolous and an abuse of process entitling the Court to direct the clerk not to accept future motions from him. See *Weidmann v. State*, 934 So. 2d 607 (Fla. 5th DCA 2006). Additionally, the Court warns that the filing of frivolous actions may subject Defendant to disciplinary procedures pursuant to the rules of the Department of Corrections. See §§ 944.279; 944.28(2)(a), Fla. Stat. (2020); see also *Griffin v. State*, 962 So. 2d 1026 (Fla. 3d DCA 2007).

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion to Correct Illegal Sentence Per 3.800(a)" is hereby **DENIED**.

Defendant has thirty (30) days from the date of this order within which to appeal.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 8th day of December, 2020.


HON. BARBARA TWINE THOMAS,
Circuit Judge

Attachments:

Plea Form
Judgment and Sentence
April 20, 1998 Order
July 30, 1998 Mandate
October 20, 1998 Transcript
Verdict Form
Amended Judgment and Sentence
Motion to Correct Illegal Sentence per 3.800(a)
August 14, 2018 Order
October 21, 2019 Mandate
February 26, 2020, Order

Copies to:

Raul Vasquez, DC#: T08246
Union Correctional Institution
25636 NE SR-16
Raiford, FL 32083

Assistant State Attorney, Division A