

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2024-0609
LT Case No. 2013-102539-CFDL

JOSHUA I. MARTINEZ,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.800 Appeal from the Circuit Court for Volusia County.
Randell H. Rowe, III, Judge.

Joshua I. Martinez, Mayo, pro se.

Ashley Moody, Attorney General, Tallahassee, and Mitchell
Sanders, Assistant Attorney General, Daytona Beach, for
Appellee.

August 27, 2024

PER CURIAM.

AFFIRMED.

WALLIS, SOUD, and PRATT, JJ., concur.

***Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.***

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

Joshua I. Martinez,

Case No.: 5D2024-0609

L.T. No.: 2013-102539-CFDL

Appellant(s),

v.

State of Florida,

Appellee(s).

Date: February 5, 2025

BY ORDER OF THE COURT:

ORDERED that "Appellant's Motion for Extension of Time . . . , " filed September 6, 2024 (mailbox date), is granted and "Appellant's Rule 9.330, Motion for Rehearing," filed September 11, 2024 (mailbox date), is accepted as timely filed and denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams
5D2024-0609 2/5/2025
SANDRA B. WILLIAMS, CLERK



Panel: Judges Wallis, Soud and Pratt

cc:

Criminal Appeals DAB Attorney General
Joshua I. Martinez
Rebecca Rock McGuigan

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 2013-102539-CFDL

v.

JOSHUA I. MARTINEZ,

Defendant.

FINAL ORDER DENYING DEFENDANT'S
MOTION TO VACATE – FLA.R.CRIM.P. 3.800

This matter came before the Court for review of the pro se Defendant's "Motion to Vacate- Fla.R.Crim.P. 3.800," filed on August 30, 2021. The Court, having considered the motion and reviewed the court file, hereby finds as follows:

On October 14, 2013, an Amended Information was filed charging the Defendant with one count of sexual battery on a person less than 12 years of age. The Defendant subsequently pled guilty as charged pursuant to a negotiated plea agreement. As agreed, the Defendant was sentenced to 78 months' imprisonment followed by 20 years of sex offender probation.

In Ground One of his motion the Defendant argues that his sentence is illegal due to the trial court imposing a consecutive term of probation instead of a term of probation that ran concurrently with the term of imprisonment that Defendant was sentenced to. The Defendant's assertion is refuted by the record. His written plea form provides that he agreed to a sentence of 78 months' imprisonment followed by 20 years of sex offender probation in exchange for pleading guilty to the crime of sexual battery on a person less than 12 years of age. *See* Appendix A (Court Record). As a result, the Court finds that the Defendant's sentence is legal as he received the exact sentence he bargained for.

Alternatively, the Defendant's instant assertion would be more properly raised in a timely motion for post-conviction relief that is filed pursuant to Florida Rule of Criminal Procedure 3.850. To the extent that Defendant raises factual assertions that are not in the record, a Rule 3.800(a) motion is not the appropriate pleading to raise the instant claim. Claims that require an evidentiary hearing are not cognizable in rule 3.800(a) motions. *See White v. State*, 60 So. 3d 1101, 1103 (Fla. 5th DCA 2011). The Court cannot find any record of Defendant's alleged agreement that his sentence would not extend past the year 2038. As a result, the Court would require an evidentiary hearing to determine whether Defendant's version of the plea agreement is true. Therefore, Ground One would have to be dismissed in the alternative as it is not cognizable in the instant motion.

In Ground Two the Defendant argues that his sentence is illegal because the passing of Section 948.012, Florida Statutes (2014), allegedly resulted in the probationary term of Defendant's sentence being run consecutively to his term of imprisonment. The Defendant's assertion is refuted by the record.

Alternatively, the Defendant's assertion fails as a matter of law. "A 'probationary' split sentence involves a period of incarceration followed by a period of probation." *Moore v. Stephens*, 804 So. 2d 575, 577 (Fla. 2002) (citing *Poore v. State*, 531 So. 2d 161, 164 (Fla. 1988)). In 1991 the Florida Supreme Court held that Section 921.187(1)(g), Florida Statutes, allowed the imposition of probationary split sentences. *See Glass v. State*, 574 So. 2d 1099, 1102 (Fla. 1991). Despite Defendant's argument that the State's passing of Section 948.012, Florida Statutes, resulted in the probationary term of Defendant's sentence being run consecutively to his term of imprisonment, there was nothing stopping the Defendant from entering into his instant plea agreement, and nothing preventing the trial court from imposing the Defendant's current sentence.

See id.; Appendix A. As a result, the Court finds that Defendant's sentence is legal as he could always be sentenced to a probationary split sentence.

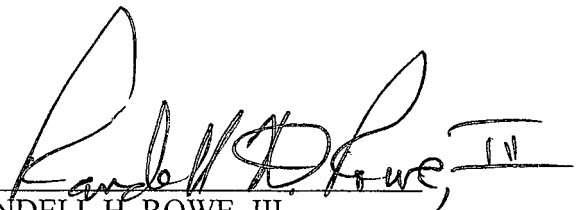
In his Ground Three the Defendant argues that his sentence is illegal because the State's passing of Section 948.012, Florida Statutes, breached the terms of his plea agreement. The Defendant's instant claim is refuted by the record and fails as a matter of law.

For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED:

That the Defendant's motion is denied; and Ground One is otherwise dismissed in the alternative. The Defendant is advised that he has **thirty (30) days** from the rendition of this Order to file a notice of appeal.

DONE AND ORDERED in Chambers in DeLand, Volusia County, Florida, this 7th day of December, 2023.



RANDELL H. ROWE, III
CIRCUIT JUDGE

Copies to:

Joshua I. Martinez, Defendant
Office of the State Attorney, eservicevolusia@sao7.org

**Additional material
from this filing is
available in the
Clerk's Office.**