

IN THE
SUPREME COURT OF THE UNITED STATES

RUSSELL L. YATES

VS.

STATE OF FLORIDA

APPENDIX A-F

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

RUSSELL L. YATES,

Appellant,

v.

CASE NO. 5D17-1100

STATE OF FLORIDA,

Appellee.

_____/

DATE: October 05, 2017

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing En Banc/Motion for Certification, filed August 31, 2017, is denied.

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

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK



Panel: En Banc Court

cc:

Office of Attorney General

Carmen F Corrente

Russell L. Yates

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

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

RUSSELL L. YATES,

Appellant,

v.

Case No. 5D17-1100

STATE OF FLORIDA,

Appellee.

Decision filed August 15, 2017

3.800 Appeal from the Circuit
Court for Osceola County,
Elaine A. Barbour, Judge.

Russell L. Yates, Graceville, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

LAMBERT, EDWARDS and EISNAUGLE, JJ., concur.

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

CASE NO. 1996-CF-27
DIVISION 11-A

STATE OF FLORIDA,
Plaintiff,

Vs.

RUSSELL L. YATES,
Defendant,
_____ /

**ORDER DENYING MOTION
TO CORRECT ILLEGAL SENTENCE**

This matter came before the Court for consideration of Defendant Russell L. Yates' Motion to Correct Illegal Sentence, filed February 22, 2016, pursuant to Florida Rule of Criminal Procedure 3.800(b).

Procedural History

Defendant was charged with kidnapping with intent to inflict bodily harm or terrorize in Counts 1 and 2; aggravated battery with a deadly weapon or causing great bodily harm in Count 3; grand theft third degree of a motor vehicle in Count 4; and burglary of a dwelling with an assault or battery in Count 5.

On June 19, 1996, the jury acquitted him on Count 1 and the Court granted a judgment of acquittal on Count 2. The jury convicted him as charged in Counts 3 and 4 and of the lesser-included offense of burglary of a dwelling in Count 5.

On September 13, 1996, the Court sentenced him as a violent career criminal to the following concurrent terms in the Department of Corrections: 40 years with 30-year minimum mandatory for Counts 3 and 5; and 15 years with 10-year minimum mandatory for Count 4. The Court also ordered \$6,332 in restitution and court costs.

The Fifth District Court of Appeal per curiam affirmed. *Yates v. State*, 704 So. 2d 1159 (Fla. 5th DCA 1998).

On June 9, 1999, Defendant filed a Motion for Postconviction Relief, which was denied on October 15, 1999. The Fifth District Court of Appeal held that his claim of ineffective assistance of trial counsel lacked merit, but ordered resentencing based on *State v. Thompson*, 750 So. 2d 643 (Fla. 1999). *Yates v. State*, 755 So. 2d 202 (Fla. 5th DCA 2000).

On June 26, 2000, he was resentenced as a habitual felony offender to the following concurrent terms in the Department of Corrections: 30 years for Counts 3 and 5; and 10 years for Count 4. The Fifth District Court of Appeal per curiam affirmed. *Yates v. State*, 791 So. 2d 489 (table) (Fla. 5th DCA 2001).

On July 23, 2001, he filed a Motion to Correct Illegal Sentence, which he subsequently amended. On October 2, 2001, the Court held a hearing and denied the Motion. The Fifth District Court of Appeal held the 30-year sentence was proper. *Yates v. State*, 823 So. 2d 273 (Fla. 5th DCA 2002).

On October 1, 2004, he filed a Motion to Correct Unlawful / Illegal Sentence and Motion to Correct Sentencing Error, which was denied on January 11, 2005. The Fifth District Court of Appeal per curiam affirmed. *Yates v. State*, 895 So. 2d 1085 (table) (Fla. 5th DCA 2005).

On June 21, 2005, he filed a Motion to Vacate Judgment and Sentence citing newly discovered evidence, followed by an Amendment and Clarification on September 27, 2006. The Court granted an evidentiary hearing, which was conducted on January 19, 2007, and denied relief on February 9, 2007. The Fifth District Court of Appeal per curiam affirmed. *Yates v. State*, 967 So. 2d 218 (table) (Fla. 5th DCA 2007).

Defendant alleges that when his sentence was vacated and remanded for resentencing, all portions of the original sentence were a nullity, so that the order of restitution had to be orally pronounced again. He argues this was not done at the June 26, 2000, resentencing hearing, or within 60 days thereafter, and therefore, the order of restitution is "a moot point and null and void and should be deleted from the clerk's record as to being active."

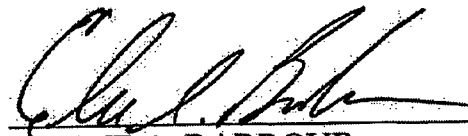
This claim lacks merit. In *Yates v. State*, 755 So. 2d 202 (Fla. 5th DCA 2000), the Fifth District Court of Appeal merely held that Defendant had to be resentenced pursuant

to *State v. Thompson*, 750 So. 2d 643 (Fla. 1999), which related to his designation as a violent career criminal. The Fifth District's opinion in *Yates* did not invalidate the order of restitution entered on September 13, 1996, which remains in full force and effect.

Based on the foregoing, it is ORDERED AND ADJUDGED:

1. The Motion to Correct Illegal Sentence is DENIED.
2. Defendant may file a Notice of Appeal in writing within 30 days of the date of rendition of this Order.

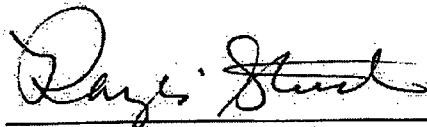
DONE AND ORDERED in chambers at Kissimmee, Osceola County, Florida,
this 29 day of March 2017.



ELAINE A. BARBOUR
Circuit Judge

Certificate of Service

I certify that a copy of the foregoing Order Denying Motion to Correct Illegal Sentence has been provided this 30 day of March 2017 via U.S. Mail ^{+ Extra} hand delivery to Russell L. Yates, DC# 474446, Graceville Correctional Facility, 5168 Ezell Road, Graceville, Florida 32440; and to the ^{* Ref e sed 9.05} Postconviction Felony Unit, Office of the State Attorney, 2 Courthouse Square, Suite 3500, Kissimmee, Florida 34741.



Judicial Assistant

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