

No. _____

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STAFF INITIALS 

**IN THE
SUPREME COURT OF THE UNITED STATES**

NELSON VIERA – PETITIONER
(Your Name)

vs.

STATE OF FLORIDA – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD DISTRICT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

NELSON VIERA
(Your Name)

1599 SW 187th Avenue

Miami, Florida, 33194 – 2801

APPENDIX A

Third District Court of Appeal

State of Florida

Opinion filed August 27, 2025.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-0550
Lower Tribunal No. F05-30218B

Nelson Viera,
Appellant,

vs.

State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Laura María González-Marqués, Judge.

Nelson Viera, in proper person.

James Uthmeier, Attorney General, for appellee.

Before FERNANDEZ, LINDSEY and BOKOR, JJ.

PER CURIAM.

**Affirmed. See Del Sol v. State, No. 3D25-0654, 2025 WL 1943812 (Fla.
3d DCA July 16, 2025).**

IN THE DISTRICT COURT OF
APPEAL
OF FLORIDA
THIRD DISTRICT

October 3, 2025

Nelson Viera,

3D2025-0550

Appellant(s),

Trial Court Case No. F05-30218B

v.

State of Florida,

Appellee(s).

Upon consideration, pro se Appellant's Motion for Rehearing En Banc is treated as having included a motion for rehearing. The motion for rehearing is hereby denied.

Pro se Appellant's Motion for Certification is hereby denied.

FERNANDEZ, LINDSEY and BOKOR, JJ., concur.

Pro se Appellant's Motion for Rehearing En Banc is, likewise, denied.

A True Copy
ATTEST

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA THIRD DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its Opinion,

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Edwin A. Scales, III, Chief Judge of the District Court of Appeal of the State of Florida, Third District, and seal of the said Court at Miami, Florida on this day.

DATE: October 23, 2025
CASE NO.: 3D2025-0550
COUNTY OF ORIGIN: Miami-Dade County
T.C. CASE NO.: F05-30218B
STYLE: Nelson Viera,

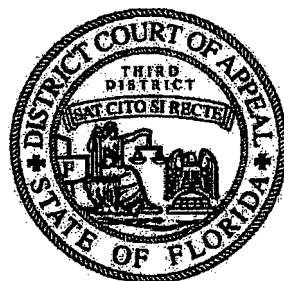
Appellant(s),

v.

State of Florida,

Appellee(s).

3D2025-0550 October 23, 2025
Mercedes M. Prieto
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



ORIGINAL TO: Miami-Dade County Clerk

cc:
Crim Appeals MIA Attorney General
Nelson Viera

IN THE DISTRICT COURT OF
APPEAL
OF FLORIDA
THIRD DISTRICT

October 23, 2025

Nelson Viera,

3D2025-0550

Appellant(s),

Trial Court Case No. F05-30218B

v.

State of Florida,

Appellee(s).

BY ORDER OF THE COURT:

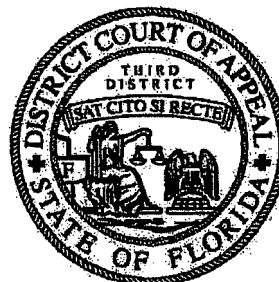
In re: Article I, section 16(b)(10)b. Time Limitations

Article I, section 16(b)(10)b. of the Florida Constitution provides that all state-level appeals and collateral attacks on any judgment must be complete within two years of the date of appeal in non-capital cases and five years from the date of appeal in capital cases unless a court enters an order with specific findings as to why the court was unable to comply and the circumstances causing the delay. Pursuant to the administrative procedures and definitions set forth in Supreme Court of Florida Administrative Order No. AOSC19-76, this case was not completed within the time frame required

by Article I, section 16(b)(10)b. because the time frame had already expired
by the time this case was filed in this Court.

A True Copy
ATTEST

~~3D 2025-0550~~ 10/23/25
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



CC: Crim Appeals MIA Attorney General
Nelson Viera

NS

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

RECEIVED
ELEVENTH JUDICIAL CIRCUIT

FEB 17 2025

THE STATE OF FLORIDA,

Plaintiff,

v.

NELSON VIERA,

Defendant.

CASE NO: F05-30218B

SECTION F-03

JUDGE: LAURA M. GONZALEZ-MARQUES

ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE came before the Court on Defendant, Nelson Viera's ("Defendant" or "Mr. Viera"), Motion to Correct Illegal Sentence (the "Motion"). The Motion was served on September 10, 2024, and Defendant supplemented his Motion with a filing on September 20, 2024. The State filed its Amended Response to the Motion on November 6, 2024. Defendant also filed a Reply on November 4, 2024, based on the State's original Response. While the Court granted the Defendant the ability to file an amended reply, no additional filing was received within the timeframe permitted. The Court having reviewed the Motion, the State's amended response, and the case file and being otherwise advised of the premises, it is hereby

ORDERED and ADJUDGED

Defendant challenges the validity of his sentence, arguing that, in light of the United States Supreme Court's decision in *Erlinger v. U.S.*, 602 U.S. 821 (2024), his enhanced sentence as a habitual offender under Fla. Stat. § 775.084 (the "Habitual Offender Statute" or the "HO Statute"), as applied in his case, is unconstitutional. The crux of Mr. Viera's challenge is that it is unconstitutional for a judge to make the findings required for the enhancement using a

preponderance of the evidence standard; rather, under *Erlinger*, such an inquiry must be made by a jury and beyond a reasonable doubt.

However, the *Erlinger* decision is not dispositive here, as it dealt with a distinguishable federal statute. Moreover, this Court is bound to follow the standing precedents of the Florida appellate courts, which have upheld the HO Statute as constitutional. Even if the Defendant is correct about the unconstitutionality of the Habitual Offender Statute, in Mr. Viera's case, this would constitute harmless error. Defendant's 25-year sentence is the minimum-mandatory sentence required under the crime he was convicted of. Thus, even without the enhancement, his sentence would have been the same. Accordingly, Defendant's Motion is **DENIED**.

PROCEDURAL HISTORY

Defendant was convicted under Fla. Stat. § 893.135(1)(c)(1)(c) of trafficking in illegal drugs, 28 grams or more but less than 30 kilograms, on August 7, 2007. He was originally sentenced to 40 years in state prison as an habitual offender, with a 25-year minimum mandatory term, on December 12, 2007. His conviction was affirmed on appeal but was remanded for resentencing before a different judge. *Viera v. State*, 35 So. 3d 1005 (Fla. 3d DCA 2010). On September 16, 2020, Defendant was sentenced to 25 years in state prison, with a 25-year minimum mandatory term and with credit for time served. He was, again, sentenced as a habitual offender.

Defendant has a lengthy post-conviction motion history, all of which have been denied. For the sake of brevity, the Court will not rehash that history, which has been detailed in prior orders. Moreover, given the development of the *Erlinger* decision last year, his current Motion raises a new constitutional challenge to his sentence.

LEGAL ANALYSIS

Defendant challenges the constitutionality of the Habitual Offender Statute in light of the recent *Erlinger* decision. Even if this Court were to weigh the merits of this argument and find in Defendant's favor, the relief sought would still be subject to the harmless-error analysis. *Britten v. State*, 181 So. 3d 1215, 1218 (Fla. 1st DCA 2015) ("It is well-settled that *Apprendi* and *Blakely* errors are subject to a harmless error analysis.") (citations omitted).

A. The Habitual Offender Statute

Florida Statute § 775.084 provides various possible enhancements to a defendant's sentence should they meet criteria. Under § 775.084(1)(a), "a court may impose" the enhanced penalty if it finds the defendant qualifies as a habitual offender, if the court makes the following findings:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.
2. The felony for which the defendant is to be sentenced was committed:
 - a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
 - b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.
3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.
4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.
5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Id.

The plain language of the HO Statute leaves this determination for the court, not the jury, as a post-conviction procedure. *Fla. Stat.* § 775.084(3)(a) (“In a separate proceeding, the court shall determine if a defendant is a habitual felony offender...”). Should the court make such a finding, the HO Statute lays out the enhanced penalty framework in subsection (4)(a). *Fla. Stat.* § 775.084(4)(a)(1-3). Prior constitutional challenges to the HO Statute have been unsuccessful. *Eutsey v. State*, 383 So. 2d 1300 (Fla. 1980); *Saldo v. State*, 789 So. 2d 1150 (Fla. 3d DCA 2001).

B. Sentencing Guidelines Under Fla. Stat. § 893.135

Defendant was convicted of violating Fla. Stat. § 893.135(1)(c)(1)(c) for trafficking in illegal drugs in an amount over 28 grams but less than 30 kilograms. This charge is a first-degree felony, which, unless otherwise specified by statute, carries a maximum penalty of 30 years in state prison. *Fla. Stat.* § 775.082 (1)(b)1. And indeed, the trafficking statute Defendant was convicted under provides that “such a person *shall* be sentenced to a *mandatory minimum term of imprisonment of 25 years...*” *Fla. Stat.* § 893.135(1)(c)(1)(c) (emphasis added). So, in Defendant’s case, his conviction subjected him to a maximum of 30 years in state prison *and* required the imposition of the 25-year minimum mandatory term.

C. *Erlinger v. U.S.*

In June last year, the United States Supreme Court issued its opinion in *Erlinger*. The Court was assessing whether the Armed Career Criminal Act should be decided by a judge “under a preponderance-of-the-evidence standard, or whether the Fifth and Sixth Amendments require a unanimous jury to make [the requisite determinations] beyond a reasonable doubt.” *Erlinger*, 605 U.S. at 825. The Court noted the government’s concession that “given the intensely factual nature of this inquiry and the impact of its resolution can have on a defendant’s

sentence...a jury must resolve it.” *Id.* at 828. However, the Court expressly stated that its holding was narrowed to only the issue of whether the defendant “was entitled to have a jury resolve ACCA’s occasions inquiry unanimously and beyond a reasonable doubt.” *Id.* at 835.

D. This Court is Bound by Current Appellate Precedent

Defendant’s Motion raises a matter of first impression before this Court, given the recent nature of the *Erlinger* decision. However, while this matter is certainly an interesting one, this Court is bound by the precedents of the appellate courts until such time as those decisions are re-examined. *Stanfill v. State*, 384 So. 2d 141, 143 (Fla. 1980) (stating that trials courts must apply appellate precedent “until they are overruled by” the Florida Supreme Court); *State v. Washington*, 114 So. 3d 182, 185 (“While a lower court is free to disagree and to express its disagreement with an appellate court ruling, it is duty-bound to follow it.”) As stated above, the Florida Supreme Court and the Third District Court of Appeal have upheld the validity of the HO Statute, albeit prior to the *Erlinger* decision. *Eutsey*, 383 So. 2d 219. That said, those cases remain good law, and this Court must follow those precedents. On that ground alone, this Court is required to deny the Defendant’s Motion.¹

E. Even Assuming *Erlinger* Renders the HO Statute Unconstitutional, Defendant Would Not be Entitled to Relief.

That said, even if *Erlinger* were to render the HO Statute unconstitutional, the challenge to Defendant’s 25-year sentence would still be subject to harmless-error analysis. *Britten*, 181 So. 3d 1215 (“It is well-settled that *Apprendi* and *Blakely* error are subject a harmless error

¹ The Court notes that the Florida Supreme Court held oral arguments on Thursday, February 6, 2025, in the case of *Maye v. State*, SC2023-1184, which challenges the constitutionality of Florida’s Prisoner Releasee Reoffender Statute (Fla. Stat. 775.082(9)) in light of the *Erlinger* decision. The ultimate ruling in that case may have implications for future assessments of the HO Statute, but until a decision is rendered, this Court is bound by the precedent before her, all which have held the HO Statute, as currently applied, to be constitutional.

analysis.”) (citing to *Washington v. Recuenco*, 548 U.S. 212, 220-221 (2006)). It is well settled that “not all errors committed at a criminal sentencing require reversal. The sentence may be affirmed if such errors are harmless.” *Brooks v. State*, 969 So. 2d 238, 241 (Fla. 2017) (citing *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986)). An error is harmless where “the trial court *would have imposed* the same sentence.” *Brooks*, 969 So. 2d at 241-242 (emphasis in original) (citations omitted).

Defendant here was sentenced to 25 years in state prison, with the 25-year minimum mandatory term. Even without the enhancement, Defendant’s conviction under § 893.135 not only supports but *requires* the imposition of a 25-year minimum mandatory sentence. The trafficking statute clear states that the Court “*shall*” impose a 25-year minimum mandatory sentence if a defendant is convicted of trafficking in illegal drugs in an amount greater than 28 grams but less than 30 kilograms. *Id.* So, even without his designation as a habitual offender, Defendant would still have faced the same sentence he was given by Judge Rodriguez.

Accordingly, even if this Court were to find that the habitual offender enhancement to Mr. Viera’s sentence was unconstitutional following the *Erlinger* decision, it would be harmless error. Mr. Viera would have received the 25-year minimum mandatory term *at a minimum*, and in fact, could have received even more—up to 30 years in state prison. Because he would have received the same sentence even without the enhancement, any constitutional challenge to the HO Statute in Mr. Viera’s case would be unsuccessful.

Because the *Erlinger* case is distinguishable from the HO Statute challenged here, because this Court is bound to follow the precedents of the appellate courts that have numerous times upheld the constitutionality of the HO Statute, and because, even if this Court were to render Florida’s Habitual Offender Statute unconstitutional in light of *Erlinger*, such a

determination would have been harmless error, given that Mr. Viera's sentence as the minimum required under the trafficking statute, the Motion is **DENIED**.

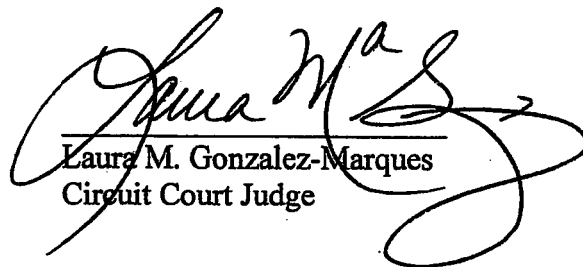
The Clerk of Court is directed to forward a copy of this order to Nelson Viera (#M35846), Everglades Correctional Institution, 1599 S.W. 187th Avenue, Miami, Florida 33194.

The Defendant is hereby notified that he has the right to appeal this order to the Third District Court of Appeal within thirty (30) days of the signing and filing of this Order.

In the event the Defendant takes an appeal of this order, the Clerk of this Court is hereby ordered to transport, as part of this Order, to the appellate court the following documents with all of their attachments:

1. Defendant's Motion;
2. State's Response; and
3. This Order.

DONE and ORDERED in Miami-Dade County, Florida this 10th day of February, 2025.



Laura M. Gonzalez-Marques
Circuit Court Judge