IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC06-1888

RENOIT SAINTELIEN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal ("Fourth District"). In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may be referred to as Saintelien and Respondent may be referred to the State.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts, but relies upon the concise statement of the facts as contained in the order of the trial court:

"1. On September 5, 2003, the [Petitioner] pled guilty to two counts of Attempted Sexual Battery on person less than 12 years of age. The [Petitioner] was adjudicated guilty and sentenced to a term of 10 years in the Department of Corrections with credit for 479 days as time served, followed by a period of 8 years of sex offender probation. It was further ordered that the [Petitioner's] sentences as to counts one and two were to run concurrent with each other."

"2. On September 12, 2003, the State filed a Motion for Written Finding of Sexual Predator Designation based on the fact that the [Petitioner] met the criteria to be declared a sexual predator pursuant to section 775.21(4)(a) and (c), Florida Statutes. On January 3, [2004], the Court entered an Order Declaring [Petitioner] a Sexual Predator pursuant to section 775.21, Florida Statutes."

"3. On May 16, 2006, the [Petitioner] filed the instant Motion. The [Petitioner] maintains that he entered into a "plea

contract" with the State and this contract did not include the [Petitioner's] designation as a sexual predator. The [Petitioner] argues that his sentence as a sexual predator was not a part of the plea negotiations and exceeds the terms of his contract, making the sexual predator designation illegal. The [Petitioner] requests that this Court enter an Order vacating the sexual predator designation."

(R 3-4, 16-17; "Order Denying Defendant's Motion to Correct Illegal Sentence").

Citing Fletcher v. State, 699 So. 2d 346 (Fla. 5th DCA 1997), as well as the statute itself, the trial court observed that: "The overriding purpose of the legislation designating certain individuals as 'sexual predators' and requiring these individuals to register themselves is to protect the public from repeat sex offenders, sex offenses who use violence, and those who prey on children." (R 4, 17; Paragraph 4, "Order Denying Defendant's Motion to Correct Illegal Sentence").

Citing Walker v. State, 718 So. 2d 217 (Fla. 4th DCA 1998) and Burkett v. State, 731 So. 2d 695 (Fla. 2d DCA 1998), the trial court concluded that a sexual predator designation was neither a sentence nor a punishment, but rather, a status resulting from the conviction of certain crimes and, in the instant case, "a collateral consequence of a plea agreement."

The trial court then denied on Petitioner's Motion to Correct Illegal Sentence on the merits. (R 4, 17; Paragraph 5, "Order Denying Defendant's Motion to Correct Illegal Sentence").

On appeal, the Fourth District, citing Walker and Connor v. State, 773 So. 2d 1242 (Fla. 4th DCA 2000), affirmed the trial court's denial of the Petitioner's motion to correct illegal sentence: "Because the sexual predator designation is not a sentence or punishment . . . a challenge to a sexual predator designation is not properly raised in a postconviction motion and should be raised in a civil proceeding." Saintelien v. State, 937 So. 2d 234, 235 (Fla. 4th DCA 2006). Conflict with King v. State, 911 So. 2d 229 (Fla. 2d DCA 2005), and Kidd v. State, 855 So. 2d 1165 (Fla. 5th DCA 2003), was certified. Saintelien, 937 So. 2d at 235.

SUMMARY OF THE ARGUMENT

Conflict should be resolved in favor of the decisions of the Fourth and First Districts. A motion to correct illegal sentence filed pursuant to Rule 3.800(a) cannot be used to challenge a sexual predator designation since such a designation is not a sentence or punishment; it is a status resulting from the conviction of certain crimes.

ARGUMENT

CONFLICT SHOULD BE RESOLVED IN FAVOR OF THE DECISIONS OF THE FOURTH AND FIRST DISTRICTS; SINCE THE DESIGNATION OF A PERSON AS A SEXUAL PREDATOR IS NEITHER A SENTENCE NOR A PUNISHMENT, THAT DESIGNATION CANNOT BE CHALLENGED BY A RULE 3.800 (a) MOTION TO CORRECT ILLEGAL SENTENCE (RESTATED)

The Respondent agrees with the Petitioner that the standard of review in the instant case is *de novo*. See, State v. McBride, 848 So. 2d 287, 289 (Fla. 2003)(question of whether defendant was procedurally barred from seeking Rule 3.800(a) relief subject to *de novo* review).

In the decision below, the Fourth District has properly held that a defendant cannot challenge a sexual predator designation in a motion for postconviction relief because "the sexual predator designation is not a sentence or punishment." Saintelien, 937 So. 2d at 235. Citing its decision in Connor v. State, 773 So. 2d 1242 (Fla. 4th DCA 2000), the Fourth District further held that the Petitioner should raise any challenges to

his sexual predator designation in a civil proceeding. Saintelien, 937 So. 2d at 235. See also, Trovillo v. Florida Department of Law Enforcement, 762 So. 2d 1038 (Fla. 5th DCA 2000)(appellant may challenge registration and notification laws applicable to sexual predators/offenders in a claim for injunctive and/or declaratory relief, not in a petition for writ of mandamus); Szuch v. State, 780 So. 2d 290 (Fla. 4th DCA 2001)(appellant may file a civil suit seeking injunctive or declaratory relief from sexual predator designation, not a motion for post-conviction relief).

In the instant decision, the Fourth District certified conflict with the Fifth District's decision in Kidd v. State, 855 So. 2d 1165 (Fla. 5th DCA 2003). In that case, citing its decision in Nicholson v. State, 846 So. 2d 1217 (Fla. 5th DCA 2003), the Court held that the defendant could challenge his sexual predator designation in a motion filed pursuant to Rule 3.800(b), Fla. R. Crim. P., since a claimed error in making a sexual predator designation is "an 'error that occurs as part of the sentencing process,' whether or not it is actually a 'sentence and punishment,' and therefore, something that is properly addressed by the trial judge that makes the designation in the first place." Kidd, 855 So. 2d at 1168, quoting, Nicholson, 846 So. 2d at 1219. However, the Fifth District noted

that "how a defendant seeking to challenge a sexual predator designation should proceed, has yet to be clarified under the rules or case law." Kidd, 855 So. 2d at 1168.

The Fourth District also certified conflict with the Second District's decision in King v. State, 911 So. 2d 229 (Fla. 2d DCA 2005). In that case the Court, receding from prior case law, held "that a sexual predator designation is a matter that can be challenged by an appropriate postconviction motion." Id. at 230. The Court clarified that a challenge to sexual predator designation may be challenged on direct appeal, or in a motion filed pursuant to Rule 3.800(b), or "may be challenged like a sentencing issue by postconviction motions pursuant to rules 3.800(a) and 3.850", and that "[a] party in the Second District should no longer file any civil motion or proceeding to challenge this designation." Id. at 234.

It may have been previously true, as the Petitioner asserts, that the "majority position" of the district courts who have addressed the issue was that a challenge to a sexual predator designation can be raised in a Rule 3.800(a) motion (see Initial Brief, page 13). However, after the Petitioner filed his initial brief, the First District aligned itself with the Fourth District. In Boyer v. State, 32 Fla. L. Weekly D122 (Fla. 1st DCA December 27, 2006), the First District affirmed the trial

judge's denial of the defendant's challenge to his sexual predator designation raised in a Rule 3.800(a) motion: "Rule 3.800(a), Florida Rules of Criminal Procedure, permits the trial court to correct an illegal sentence. Any error here does not constitute an illegal sentence, however, because the alleged error involves Appellant's designation as a sexual predator. A sexual predator designation is neither a punishment nor a sentence and does not render a sentence illegal as the term is used in rule 3.800(a)." Id. Following Saintelien, the First District held that a defendant "cannot challenge his designation as a sexual predator in a postconviction motion but must instead file a separate civil suit seeking injunctive or declaratory relief." 32 Fla. L. Weekly at D122. The First District certified conflict with King and Kidd. 32 Fla. L. Weekly at D123.

The decisions of the Fourth and First Districts - - unlike the decisions of the Second and Fifth Districts - - are consistent with Rule 3.800(a) and the sexual predator statute. The Rule addresses illegal **sentences** only, not other consequences of a conviction:

> **(a) Correction.** A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, or a sentence that does not grant proper credit for time served when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief . . .

Rule 3.800(a), Fla. R. Crim. P. An "illegal sentence", for the purposes of the Rule, is a sentence that "no judge under the entire body of sentencing laws could possibly impose." Wright v. State, 911 So. 2d 81, 83 (Fla. 2005). "To be illegal within the meaning of rule 3.800(a) the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances." Carter v. State, 786 So. 2d 1173, 1178 (Fla. 2001), quoting, Blakley v. State, 746 So. 2d 1182, 1186 (Fla. 4th DCA 1999). This Court has held that in order for there to be a remedy under Rule 3.800(a), the illegality of the sentence must be of a fundamental nature. Wright, 911 So. 2d at 83-84.

Designation as a sexual predator is neither a sentence nor a punishment: "The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes." Section 775.21(3)(d), Florida Statutes (2006). This Court has held that "the sexual offender registration requirement in a collateral consequence of the plea." State v. Partlow, 840 So. 2d 1040, 1043 (Fla. 2003). See also, Fletcher v. State, 699 So. 2d 346, 347 (Fla. 5th DCA 1997)("the designation 'sexual predator' is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes"); Turner v.

State, 888 So. 2d 73, 75 (Fla. 5th DCA 2004)(designation as a sexual predator is a collateral matter and does not constitute fundamental error); Reyes v. State, 854 So. 2d 816, 817-818 (Fla. 4th DCA 2003)(defendant not entitled to an evidentiary hearing before a court designates him a sexual predator because such designation is not a sentence or punishment, but rather a status resulting from conviction of certain crimes); Gonzalez v. State, 808 So. 2d 1265, 1265 (Fla. 3d DCA 2002)("the sexual predator designation is not an impermissible modification of an offender's sentence 'because the designation 'sexual predator' is neither a sentence nor a punishment'"); Burkett v. State, 731 So. 2d 695, 698 (Fla. 2d DCA 1998)("the sexual predator designation is a collateral consequence of a plea and need not be orally pronounced"); Walker v. State, 718 So. 2d 217, 218 (Fla. 4th DCA 1998)(rejecting argument that section 775.21 is penal in nature); Collie v. State, 710 So. 2d 1000, 1008 (Fla. 2d DCA 1998)("designating an offender to be a sexual predator is a regulatory act done for remedial purposes").

Challenging a sexual predator designation through a Rule 3.800(a) is contrary to the intention of the Rule. Although this Court has recently noted "there is no specific definition of 'illegal sentence' in the rule itself," Wright, 911 So. 2d at 83, it is self-evident that an "illegal sentence" must, in fact,

be an actual sentence. Moreover, only a narrow class of sentencing errors qualify as illegal sentences. See, Maddox v. State, 760 So. 2d 89, 100 (Fla. 2000)("not all sentencing errors considered 'fundamental on direct appeal as before enactment of the [Criminal Appeal Reform Act of 1996]would necessarily constitute an 'illegal' sentence subject to correction at any time pursuant to rule 3.800(a) . . . clearly the class of errors and constitute an 'illegal' sentence that can be raised for the first time in a postconviction motion decades after a sentence becomes final is a narrower class of errors than those termed 'fundamental' errors that can be raised on direct appeal even though unpreserved"). See also, Wright, 911 So. 2d at 83 (listing several types of illegal sentences contemplated by the rule).

"Rule 3.800(a) is intended to balance the need for finality of convictions and sentences with the goal of ensuring that criminal defendants do not serve sentences imposed contrary to the requirements of law." Carter, 786 So. 2d at 1176. Since a sexual predator designation is clearly not a sentence, and therefore cannot be an "illegal sentence", it may not be challenged by a motion filed pursuant to Rule 3.800(a). To the extent that the decisions of the Second and Fifth Districts hold otherwise, they should be disapproved by this Court.

The Kidd and King Courts do not adequately explain how a collateral consequence of a conviction, which is not a sentence, can be challenged by a motion to correct illegal sentence. The Kidd Court describes a sexual predator designation as something that occurs as part of the sentencing process. 855 So. 2d at 1168. While this may be true, it does not follow that sexual predator designation is a sentence (much less an "illegal sentence") simply because it may occur during sentencing.

The King Court simply recedes from its prior decisions which held that 3.800(a) was not available to those challenging a sexual predator designation and concludes "[f]or whatever reason" that "challenging a sexual predator designation in a civil proceeding has not proven to be the 'workable mechanism to resolve such claims' that this court envisioned in the 2000 *Coblentz* opinion." 911 So. 2d at 233, quoting, Coblentz v. State, 775 So. 2d 359 (Fla. 2d DCA 2000). Although, seeking a "workable mechanism" to resolve challenges to a sexual predator designation (beyond direct appeal) may be a worthwhile goal, it should not be achieved at the expense of reinterpreting Rule 3.800(a) well beyond its stated purpose of correcting illegal sentences.

Since the decisions in Kidd and King are contrary to the plain meaning of Rule 3.800(a), as well as section 775.21(3)(d),

Florida Statutes (2006), conflict should be resolved in favor of the Fourth District's decision in Saintelien and the First District's opinion in Boyer.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests that this Court affirm the decision of the Fourth District and resolve conflict in favor of the decision of that Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing "Respondent's Answer Brief on the Merits" has been furnished by mail to

Beverly A. Pohl, Esq., Broad and Cassel, 100 S.E. Third Ave., Ste. 2700, Fort Lauderdale, FL 33394 on February 15, 2007.

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DANIEL P. HYNDMAN

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

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DANIEL P. HYNDMAN