IN THE SUPREME COURT
OF FLORIDA

CASE NO. SC06-1888

RENOIT SAINTELIEN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Discretionary Review of a Certified Conflict
Decision of the Fourth District Court of Appeal

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

In this postconviction case challenging the imposition of a sexual predator designation entered subsequent to sentencing, Petitioner Renoit Saintelien seeks review of a decision of the Fourth District Court of Appeal, which affirmed the denial of his Rule 3.800(a) Motion to Correct Illegal Sentence but certified direct conflict with the Second and Fifth Districts. R-20-21 (*see* Appendix). This Court has jurisdiction under article V, § 3(b)(4), Florida Constitution. The Court appointed counsel for briefing on the merits, but has postponed a decision on jurisdiction. R-27.

The issue on which there is conflict is whether a challenge to a sexual predator designation may be raised in a Rule 3.800(a) motion to correct an illegal sentence. The Fourth District has said no, but the Second and Fifth Districts have said yes.

In September 2003, pursuant to a negotiated plea agreement, Saintelien pled guilty to two counts of attempted sexual battery on a person less than twelve years of age. *See* R-12 (plea agreement); R-3 (Order

Denying Rule 3.800(a) Motion).[1] A week after Saintelien was adjudicated guilty and sentenced, the State filed a Motion for Written Finding of Sexual Predator Designation, pursuant to section 775.21(4)(a) and (c), Florida Statutes. *See* R-3, ¶ 2.[2] Four months later, the court held the requisite hearing (*see* R-9, ¶ 2) ("on separate motion and hearing"), and on January 3, 2004 entered an Order Declaring Defendant a Sexual Predator. *See* R-3, ¶ 2 ("January 3, 200<u>3</u>" is apparently a typographical error in the Order denying the post-conviction motion).[3]

In May 2006, Saintelien filed a *pro se* Motion to Correct Illegal Sentence, pursuant to 3.800(a), Fla.R.Crim.P., seeking to vacate the sexual predator designation. R-9-10 (motion). He alleged that the plea agreement "never included a designation as a sexual predator," and that the designation therefore "exceeds the terms of the contract," and is "illegal." R-10. The motion was summarily denied on the merits, by Palm Beach County Circuit

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[1] The Rule 3.800(a) Motion mistakenly states that Saintelien pled to "one (1) count. . . " (R-9), but the plea agreement indicates that he pled to counts "1-2." R-12.

[2] The State's motion is not in the record on appeal, but is referenced in the Circuit Court's Order.

[3] The Order designating Saintelien a sexual predator is not in the record. We note that Saintelien has advised the undersigned that he was present at the hearing. *See* R14 (January 5, 2004 request that he be "returned to DOC as soon as possible").

Judge Lucy Chernow Brown. *See* R-4 (June 2, 2006 Order) ("The Defendant's argument is … without merit.").

In denying relief, the Circuit Court relied upon *Walker v. State*, 718 So. 2d 217 (Fla. 4th DCA 1998), which held that the sexual predator designation "'is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.'" R-4, 17 (*quoting Walker*, 718 So. 2d at 218). The Order also cited *Burkett v. State*, 731 So. 2d 695 (Fla. 2d DCA 1998), which reasoned (on a direct appeal of a sentence and sexual predator designation imposed at sentencing) that "a sexual predator finding is not considered part of the defendant's sentence, but a collateral consequence of a plea agreement." R-4, 17.[4] Judge Brown concluded that, as the designation is not a "sentence," Saintelien's argument that it constituted an illegal sentence was "without merit." *Id*.

Saintelien appealed *pro se* in a summary proceeding pursuant to Rule 9.141(b)(2), Fla.R.App.P. Consistent with its own precedent, the Fourth District denied relief on procedural grounds and never reached the merits.

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[4] We note that, in a related context, this Court has also held that "the sexual offender registration requirement is a collateral consequence of the plea. . . ." *State v. Partlow*, 840 So. 2d 1040 (Fla. 2003). But *Partlow* did not present the issue of how a sexual offender (or predator) designation might be subject to review; it held that the failure to inform the defendant of sexual offender registration and reporting requirements was not a ground to vacate the plea. Thus, *Partlow* does not foreclose our argument in this case.

The District Court held that "[b]ecause 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." R-20 (Appendix, p. 1) (*citing Walker v. State*, 718 So. 2d at 217; *Connor v. State*, 773 So. 2d 1242 (Fla. 4th DCA 2000)). Recognizing that "[t]he Second and Fifth Districts have held to the contrary," the District Court certified direct conflict with *King v. State*, 911 So. 2d 229 (Fla. 2d DCA 2005) (*en banc*), and *Kidd v. State*, 855 So. 2d 1165 (Fla. 5th DCA 2003). *See* R-20 (Appendix, p. 1).

Saintelien timely filed a notice to invoke the discretionary jurisdiction of this Court (R-23), and this proceeding followed. As the District Court decided the case on procedural grounds, without reaching the merits, this Brief addresses only the procedural issue of whether Rule 3.800(a) may be utilized to challenge a sexual predator designation, leaving consideration of the merits of Saintelien's motion for the District Court on remand.

ISSUE PRESENTED

WHETHER A CHALLENGE TO A SEXUAL PREDATOR DESIGNATION, UNDER § 775.21(5), FLA. STAT., MAY BE RAISED IN A RULE 3.800(A) POSTCONVICTION MOTION?

SUMMARY OF ARGUMENT

This Court should disapprove and reverse the decision of the Fourth District Court of Appeal, which held that a challenge to a sexual predator designation must be raised in a civil proceeding and cannot be raised in a Rule 3.800(a) post-conviction motion. Judge Altenbernd's analysis in *King v. State*, 911 So. 2d 229 (Fla. 2d DCA 2005) (*en banc*), finding the civil remedy solution to be unworkable, is persuasive. *Cf. Nicholson v. State*, 846 So. 2d 1217 (Fla. 5th DCA 2003). Thus, this Court should approve the reasoning of the Second and Fifth Districts, which permit a challenge to a sexual predator designation to be raised in a Rule 3.800(a) proceeding, and remand for the District Court to consider the merits of Renoit Saintelien's Motion.

A sexual predator designation is in the nature of a sentence. It is an automatic consequence of certain predicate convictions. It is imposed by the sentencing court, either at the time of sentencing or afterwards, upon the motion of the state attorney. It imposes numerous affirmative obligations and burdens on a person's liberty, which, with few exceptions, remain in place for the duration of a person's life. Thus, even if one concludes that a sexual predator designation is a "status" and a collateral consequence of a

sentence, rather than part of the "punishment" imposed at sentencing, it is a semantic distinction without a difference.

Rule 3.800(a) procedures, which do not require a hearing or factual development but permit the court to rule based on the record alone, are well-suited to a challenge to a sexual predator designation, because the legality of that designation may be resolved by examining the person's history of convictions in the court file, without more.[5] Requiring an incarcerated person to institute a civil proceeding, as the Fourth District requires, is an unreasonable approach to an issue that is recurring, which arises out of a criminal case and thus is unfamiliar to civil courts, and which adds burdensome layers of civil litigation requirements to an issue that can be most readily and appropriately resolved by the criminal court examining a defendant's criminal record.

Thus, since it is within the province of this Court to establish rules of criminal procedure, the Legislature's declaration that a sexual predator designation is "neither a sentence nor a punishment, but simply a status resulting from the conviction of certain crimes" (§ 775.21(3)(d), Fla. Stat.), should not be determinative in deciding *how* an allegedly illegal sexual predator designation may be challenged and reviewed. Rule 3.800(a)

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[5] *See* Rule 3.800(a) (stating that the motion must "affirmatively allege[] that the court records demonstrate on their face an entitlement to . . . relief").

procedures provide the most judicially efficacious and logical approach, particularly for those cases in which the sexual predator designation is imposed after sentencing, precluding it from being raised on direct appeal of the conviction and sentence.

ARGUMENT

A SEXUAL PREDATOR DESIGNATION IS IN THE NATURE OF A SENTENCE AND SHOULD BE SUBJECT TO POSTCONVICTION REVIEW IN A RULE 3.800(A) PROCEEDING

The question presented in this appeal, involving the scope of relief available under Rule 3.800(a), Fla.R.Crim.P., is an issue of law subject to *de novo* review. *See State v. McBride*, 848 So. 2d 287, 289 (Fla. 2003).

The Fourth District's decision below, foreclosing a postconviction claim and holding that the sexual predator designation may not be challenged *via* Rule 3.800(a), Fla.R.Crim.P., but should be "raised in a civil proceeding," adopts a position that is impractical and unworkable, and which should be rejected.

This Court has recognized that the designation as a sexual predator under section 775.21(5), Florida Statutes, "constitutes a deprivation of a protected liberty interest." *State v. Robinson*, 873 So. 2d 1205, 1214 (Fla. 2004). A person designated a sexual predator is subject to a life-long

stigma, constant surveillance by way of the registration and notification requirements, and lasting societal burdens, including community ostracism and criminal penalties for non-compliance with the statutory requirements. *See id.*, and discussion of the statute, *infra*. Although the Court has postponed its decision on jurisdiction in this case, the significance of the interests at issue, the number of persons affected, and the stark and certified direct conflict among the district courts, should persuade this Court to exercise its jurisdiction and resolve the conflict.[6]

A. THE APPLICABLE STATUTE AND RULE

We begin with Rule 3.800(a), which provides in part:

> (a) **Correction**. A court may at any time correct an illegal sentence imposed by it . . . when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief . . . .

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." *State v. McBride*,

[6] The Florida Department of Law Enforcement Sexual Offender and Predator Unit reports that 6,129 persons are registered in Florida as sexual predators. It is not known how many of those were designated as sexual predators subsequent to the sentencing hearing, and thus foreclosed from challenging the designation on direct appeal of the sentence.

848 So. 2d 287, 289 (Fla. 2003) (*quoting Carter v. State*, 786 So. 2d 1173, 1176 (Fla. 2001)). While a sexual predator designation may not be a "sentence" in the traditional sense, we urge the Court to hold that it is in the nature of a sentence, and reviewable through a Rule 3.800(a) motion.

The Florida Sexual Predators Act, imposing life-long registration and notification requirements on offenders designated as sexual predators, states that "[t]he 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." § 775.21(3)(d), Fla. Stat. However, the designation is imposed in a manner akin to a sentence. For example, section 775.21(5)(a)2 provides that "the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator . . . ." [7] The sexual predator designation is therefore a function of the criminal court and part of the sentencing process. And, unlike other collateral consequences of a criminal

[7] In cases where the sentencing court fails at the time of sentencing to make a written finding that the offender is a sexual predator, the statute allows the state attorney to bring that matter to the court's attention after sentencing, and the court may enter a post-sentencing order designating a person as a sexual predator. § 775.21(4)(c); § 775.21(5)(c).

conviction, designation as a sexual predator imposes affirmative duties and responsibilities and limitations on the person's liberty.[8]

A sexual predator is subject to constant surveillance by law enforcement agencies for the duration of his lifetime. Pursuant to the detailed registration requirements in section 775.21(6), Florida Statutes, a sexual predator must maintain complete and accurate personal information, including physical characteristics, residence, and place of employment, as well as any other information "determined necessary," for use by law enforcement agencies, communities, and the public. Absent a full pardon or an order setting aside one of the predicate convictions, once an offender is designated a sexual predator, he or she must comply with the registration requirements forever. § 775.21(6)(l). After completion of the sentence imposed, *and* after 10, 20, or 30 additional years, depending on the date of conviction, a person may petition to have the sexual predator designation removed, but the court has the discretion to deny the petition even if all the statutory criteria are satisfied. *See id.*

In addition to surveillance by law enforcement agencies, a designated sexual predator is subject to surveillance by the community. Section

[8] Other collateral consequences include *prohibitions* on certain privileges (including voting, holding public office or state licensures, and owning or possessing firearms), not *affirmative duties* such as the registration and reporting requirements.

775.21(7)(a) requires that the community and public be notified of the presence of registered sexual predators. Upon notification of a sexual predator's residence in a community, local law enforcement agencies are required to inform the public and to disseminate personal information that must include the sexual predator's name, photograph, current address, place of employment, and the circumstances of the sexual predator's offenses, including whether the victim was a minor or an adult. *Id.*

In addition to being subjected to continuous and permanent surveillance by law enforcement and the public, a sexual predator is subject to "specialized supervision by specially trained probation officers," and is prohibited from working with children. § 775.21(3)(b). Thus, although the Legislature has declared that the sexual predator designation is a "status," it is a status that has all the hallmarks of a sentence and punishment. The harsh and far-reaching consequences of this designation, which flow solely from the fact of predicate convictions, should weigh in favor of a defendant's ability to challenge its erroneous imposition with a process that has proven to be effective for other illegal sentences that appear on the face of the record.[9]

[9] Surely to those who have the status as a registered sexual offender, the burdens imposed must feel like punishment. Thus, the use of the word "status" cannot obscure the reality of the incessant reminders that society has

B. THE CASE LAW

Three district courts of appeal have considered the issue of whether a defendant can raise a challenge to a sexual predator designation in a Rule 3.800(a) motion. The majority position, answering the question in the affirmative, is found in *King v. State*, 911 So. 2d 229 (Fla. 2d DCA 2005) (*en banc*), and *Kidd v. State*, 855 So. 2d 1165 (Fla. 5th DCA 2003). The Fourth District stands alone in holding to the contrary, and requiring that postconviction challenges to a sexual predator designation be brought in a civil proceeding.

The sole reasoning offered in support of that minority view is the idea that the sexual predator designation under 775.21(5) is regulatory in nature. *See Walker v. State*, 718 So. 2d 217, 218 (Fla. 4th DCA 1998) (*citing Fletcher v. State*, 699 So. 2d 346, 347 (Fla. 5th DCA 1997)). Because the designation "is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes," according to the Fourth

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deemed registered sexual predators pariahs, unfit even to reside in many communities. *See e.g.*, City of Miami Beach Ordinance Sec. 70-402 (prohibiting a sexual predator from residing, even on a temporary basis, "within 2,500 feet of any school, designated public school bus stop, day care center, park, playground, or other place where children regularly congregate"). Just as the federal government insists that Iraq is having an "insurgency," not a civil war, the Legislature insists that sexual predator registration is nothing more than a "status," not "punishment." But in both examples the distinction, if any, is merely semantic.

District's view, the designation cannot be reviewed *via* a postconviction challenge to a criminal sentence. *Id.* As an alternative, the Fourth District has suggested that the aggrieved defendant file a separate civil lawsuit seeking injunctive or declaratory relief. *See Szuch v. State*, 780 So. 2d 290 (Fla 4th DCA 2001); *Connor v. State*, 773 So. 2d 1242 (Fla. 4th DCA 2000).

The Fifth District has addressed the practical problems that would arise with the above approach, albeit deciding whether Rule 3.800(b) applied, not Rule 3.800(a).[10] *Nicholson v. State*, 846 So. 2d 1217 (Fla. 5th DCA 2003), involved the allegation, similar to that in this case, that the defendant's designation as a sexual predator was illegal. The court noted that under the procedure set forth in § 775.21(5)(a)1, it is the *sentencing court's* responsibility to make a written finding that the defendant is a sexual predator. *Id.* at 1219.[11] *Nicholson* reasoned that, despite the fact that the sexual predator designation is not intended to be a sentence or punishment, it is in fact a function of the criminal court as part of the sentencing process.

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[10] Rule 3.800(b) provides a method for presenting sentencing errors to the trial court prior to a direct appeal of a conviction and/or sentence.

[11] § 775.21(5)(a)1 provides:

> An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator . . . .

Id. The court also noted that Rule 3.800 "expressly applies to any 'sentencing error.'" *Id.* In applying that analysis, which we support, a sentencing error is more than an error in a "sentence," but also "any error that occurs as part of the sentencing process." *Id.*

The *Nicholson* court recognized that "the trial judge who made the designation is the one in the best position to evaluate the claim and correct the error. Therefore, the trial judge is the one to whom the error must first be raised—either during the sentencing process or thereafter." 846 So. 2d at 1219. Comparing the cumbersome alternative of initiating a separate civil proceeding, as espoused by the Fourth District, the court found that Rule 3.800 proceedings were a more "sensible" choice:

> If the sexual predator designation were merely a civil proceeding somehow appended to a criminal case . . . the time frames would expand greatly, the difficulty and cost of the proceedings would explode, the judge evaluating the claim of error may well have no knowledge of the law or prior proceedings, indigent defendants would be *pro se* and who knows who would represent the State. *Given these alternatives, we choose the sensible one and conclude this has to be a "sentencing error" to which Rule 3.800 applies*.

Nicholson, 846 So. 2d at 1219 (emphasis supplied).

In *Kidd v. State*, 855 So. 2d 1165 (5th DCA 2003), certified by the court below as being in conflict with this case, the Fifth District allowed a

defendant to raise a challenge to his designation as a sexual predator *via* a Rule 3.800(b) motion to correct his sentence. Subsequently, the Fifth District extended this holding to allow a challenge to a sexual predator designation "in a proper motion pursuant to rule 3.800(a) or rule 3.850." *Cabrera v. State*, 884 So. 2d 482, 484 (Fla. 5th DCA 2004).

The Second District, sitting *en banc*, has also reached the conclusion that a sexual predator designation may be challenged *via* postconviction motions pursuant to Rule 3.800(a), receding from prior precedent holding that initiating a civil proceeding was the appropriate remedy. *See King*, 911 So. 2d at 233. In *Coblentz v. State*, 775 So. 2d 359, 360 (Fla. 2d DCA 2000), later disapproved by *King*, the court had expressed uncertainty as to the practicality of the court's precedent, stating:

> [W]e are convinced that Mr. Coblentz and others in his situation should have some vehicle to review the civil order that determines their status as sexual predators. At least from a practical standpoint, we doubt that a pro se right to seek a direct appeal of this civil proceeding within thirty days of sentencing is a workable solution.

Coblentz, 775 So. 2d at 360.

Five years later, in *King*, 911 So. 2d at 229, certified by the court below as being in conflict with this case, the *en banc* Second District re-examined its position in previous cases in which that court had denied relief

under 3.800(a) to defendants seeking to challenge their sexual predator designations. The *King* court described the unwieldy and ineffective result in *Coblentz*, where the court recommended that the defendant file a Rule 1.540(b), Fla.R.Civ.P., motion and denied the defendant relief under Rule 3.800(a). *King*, 911 So. 2d at 232. The defendant, heeding the court's advice, filed the Rule 1.540(b) motion. *Id.* That motion was denied at the trial court level without consideration on the merits because the defendant's prior 3.800(a) motions had been denied and those denials had been affirmed by the Second District. *Id.* Thus, Coblentz was left without a remedy.

The *King* court also discussed the ineffectiveness of the declaratory judgment proceeding proposed in *Jackson v. State*, 893 So. 2d 706 (Fla. 2d DCA 2005). *King*, 911 So. 2d at 232. The defendant in that case, following the advice of the court, filed a petition for declaratory judgment after the Second District denied him relief under Rule 3.800(a). *Id.* at 233. His petition was denied at the trial court level on the grounds that the defendant had raised identical allegations in the form of a 3.800(a) motion, and had been denied relief. *Id.*

After an examination of the procedural difficulties and inequities that resulted from the approach adopted in those cases, the *en banc* court in *King* concluded that "experience has unquestionably proven that we were wrong .

. . 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 . . . ." *Id.* at 233.

Accordingly, in *King* the Second District receded from *Coblentz*, *Jackson*, and other cases with similar holdings, and approved of several methods by which a defendant may challenge the sexual predator designation. 911 So. 2d at 234. Among them is the ability to file a postconviction motion pursuant to Rule 3.800(a).[12] *Id.* In doing so, the court aligned itself with the Fifth District and certified conflict with the Fourth District cases that take a narrow view of Rule 3.800(a). *Id.*

C. THE REASONS TO PERMIT POSTCONVICTION REVIEW

As discussed in *King*, experience has shown that challenging the sexual predator designation by means of a civil proceeding is unduly burdensome, often ineffective, and not consonant with the fact that the designation is part of the sentencing process. For most defendants, the possibility of initiating a lawsuit for injunctive or declaratory relief is

[12] In addition, *King* held that the designation may be imposed or modified after sentencing without regard to the time limits established in Rule 3.800(c), Fla.R.Crim.P., directly appealed under Rule 9.140(b)(1)(E) and Rule 9.140(b)(1)(D), Fla.R.App.P., or challenged under Rules 3.800(b) and 3.850, Fla.R.Crim.P. *See* 911 So. 2d at 234.

foreclosed by the expense, time, and effort involved in that undertaking. A *pro se* right to seek a direct appeal of the order is similarly not a viable alternative, if that were to be the only avenue of review. Many defendants designated as sexual predators are incarcerated and, with only thirty days in which to file a notice of appeal, many might miss that date, if they are without counsel or if they were not present at the hearing in which the designation was imposed.[13] Given the inadequacy of these civil alternatives, foreclosing a defendant's ability to challenge the designation *via* Rule 3.800(a) simply because the Legislature chose to characterize the designation as a "status" rather than a sentence is, in our view, unjust.

It is beyond question that matters of substantive law are the domain of the Legislature. However, the Florida Constitution, article V, § 2(a) states that "[t]he Supreme Court shall adopt rules for the practice and procedure in all courts . . . . " This Court, recognizing its authority to fashion rules of procedure, has stated:

> Substantive law prescribes the duties and rights under our system of government. The responsibility to make substantive law is in the legislature within the limits of the state and federal constitutions. Procedural law concerns the means and method to apply and enforce those duties and rights. ***Procedural rules concerning the judicial branch are the responsibility of this Court***,

[13] The statute does not require the defendant's presence at the hearing.

> subject to repeal by the legislature in accordance with our constitutional provisions.

Benyard v. Wainwright, 322 So. 2d 473, 475 (Fla. 1975) (emphasis supplied). Procedural law "encompass[es] the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion." *Haven Federal Sav. & Loan Ass'n v. Kirian,* 579 So. 2d 730, 732 (Fla. 1991).

The Legislature has determined that persons who commit certain crimes "present an extreme threat to the public safety," and should be designated sexual predators subject to numerous requirements. § 775.21(3)(a). In doing so, legislators have exercised their authority to create substantive law. But *how* a defendant may seek redress for an erroneous sexual predator designation is a matter of procedural rather than substantive law. Thus, this Court has the authority to determine the process by which the sexual predator designation may be challenged. That the Legislature has chosen to characterize the designation as a status rather than a sentence does not preclude this Court from determining that, procedurally, the designation can be challenged *via* a Rule 3.800(a) motion.

As discussed above, along with the sexual predator designation come severe and permanent consequences. In addition to the injury to one's

reputation, a sexual predator faces permanent ostracism within the community, constant surveillance by law enforcement, damage to personal relationships, difficulty finding employment or a permissible place of residence, and the possibility of retributive attacks, vandalism, and discrimination by members of the local community. *See generally Robinson*, 873 So. 2d at 1213-14. In light of the severity of these consequences, a person designated a sexual predator must be given a procedurally workable method by which to challenge the legality of that designation. Initiating a separate civil proceeding, as directed by the Fourth District, is not a workable method. *See Nicholson*, 846 So. 2d 1217, *supra*, pp. 14-15.

Under section 775.21(5)(a)1, Fla. Stat., "the sole criterion for determining whether a defendant must be designated a sexual predator is whether the defendant was convicted of a qualifying offense." *State v. Robinson*, 873 So. 2d 1205, 1212 (Fla. 2004). Section 775.21(4)(a) creates categories of crimes, and requires that those who commit those crimes be designated sexual predators. The statute "vests no discretion in the trial courts with respect to determining whether the Act should apply to a particular offender." *Milks v. State*, 894 So. 2d 924 (Fla. 2005). As a result,

evaluating the propriety of the sexual predator designation requires no factual inquiry other than a review of the record.

The procedural framework of a Rule 3.800(a) proceeding lends itself well to the purely legal determination of whether a sexual predator designation was erroneously imposed. Such proceedings are decided strictly on the face of the record, without an evidentiary hearing. The sentencing judge, the person in the best position to correct the error due to his or her familiarity with the case, would be the person to whom the alleged error is presented. All proceedings related to a defendant's convictions—and a sexual predator designation is indisputably related to the defendant's convictions—would remain under a single file number. This Court should approve a procedure that is "sensible" (*see Nicholson, supra*), and Rule 3.800(a) fits the bill.

CONCLUSION

For the foregoing reasons, the Court should accept jurisdiction, disapprove the decision below, approve the reasoning in *King* and *Kidd*, and remand for a consideration of the Rule 3.800(a) motion on the merits.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with Rule 9.210, Fla.R. App.P., and is prepared in Times New Roman 14-point font.

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