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

REPLY BRIEF

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THE BURDENS OF A SEXUAL PREDATOR DESIGNATION, IF IMPROPERLY IMPOSED, SHOULD BE SUBJECT TO REVIEW AND CORRECTION *VIA* A RULE 3.800(A) MOTION

In the Answer Brief, the State notes, correctly, that in *Boyer v. State*, 946 So. 2d 75 (Fla. 1st DCA 2006), the First District aligned itself with the Fourth District, citing *Saintelien*, *id.* at 76, and that the decision below no longer represents the "minority view" as we argued in the Initial Brief. Although to date, the Court has postponed a decision on jurisdiction, both the First and Fourth Districts now squarely conflict with the decisions of the Second and Fifth Districts, providing a compelling reason for this Court to accept jurisdiction in this case and to clarify the law.

The State's argument is based upon the premise that a sexual predator designation is a collateral consequence of a conviction, not a "sentence" *per se*, and that, as a result, it should not be reviewable *via* a rule that, by its own terms, provides a procedural vehicle for challenging an "illegal sentence." But that is a simplistic argument affording too much weight to the statement in section 775.21(3)(d), Fla. Stat. ("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"). It is a "status" that has the essential hallmark of a sentence: severe *lifelong* restrictions on liberty.

Further, logic demands that when an order from a criminal trial judge is the *only* manner in which a sexual predator designation may be imposed, that designation is *in the nature of* a criminal punishment or sentence—despite the Legislative provision stating otherwise—and therefore ought to be reviewable in the same manner as other aspects of a sentence, both on direct appeal and *via* post-conviction proceedings, if the designation in a given case is unauthorized by statute and illegal. And how that review should proceed is not within the Legislature's power to dictate,

The State's Brief ignores section "C" of the Argument in the Initial Brief ("The Reasons to Permit Postconviction Review"), which recognized this Court's unique constitutional power to adopt rules of procedural in criminal cases. *See* Article V, section 2(a), Fla. Const. That power is relevant here, because a sexual predator designation, even if it is not a "sentence," is imposed *in a criminal case*. *See Therrien v. State*, 914 So. 2d 942, 948 (Fla. 2005) ("section 775.21(5)(c) clearly makes the determination that an offender is a sexual predator *exclusively* the province of the trial court") (emphasis supplied). Thus, if a sexual predator designation is improperly imposed, and if that error is apparent on the face of the record, there is no reason not to permit Rule 3.800(a) to provide an avenue of relief.

Florida Rule of Criminal Procedure 3.020 provides that the Rules of Criminal Procedure "are intended to provide for the just determination of every criminal proceeding. . . [and] . . . shall be construed to secure *simplicity in procedure* and fairness in administration." (emphasis supplied). Those courts that would require a prisoner to file a civil lawsuit to challenge the criminal court's order imposing a sexual predator designation, with the attendant requirements of a filing fee (or the burdens of obtaining an order of indigency and a waiver of the fee), civil discovery, and transport for purposes of hearings, would substitute all of that for the "simplicity in procedure" of filing a Rule 3.800(a) motion with the sentencing court. That would be contrary to the intent of the Rules of Criminal Procedure and, as the *en banc* Second District has held, contrary to common sense. *See King v. State*, 911 So. 2d 229, 233-234 (Fla. 2d DCA 2005) (*en banc*).

CONCLUSION

For the foregoing reasons, and those advanced in the Initial Brief, 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 SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief has been furnished to counsel listed below, by U.S. Mail this 9th day of March, 2006:

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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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