

Third District Court of Appeal

State of Florida, July Term, A.D. 2010

Opinion filed August 18, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D10-1357

Lower Tribunal No. 97-20712

Juan Marriaga,
Appellant,

vs.

The State of Florida,
Appellee.

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

Juan Marriaga, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE and CORTIÑAS, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

This is an appeal of an order denying a motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a). The defendant contends that he does not qualify as a sexual predator under section 775.21, Florida Statutes.

The defendant was convicted of attempted sexual battery. The State response indicates that the crime was committed on a victim less than twelve years of age and that the crime was a felony of the first degree.

The defendant argues that as of the 1997 crime date, the Florida Sexual Predators Act did not apply to attempts. Therrien v. State, 914 So. 2d 942, 944-45 (Fla. 2005). Attempts were added to the Act in 1998. Id.

As we interpret the Therrien decision, the question whether an offender qualifies under the Act is to be decided as of the date of sentencing. See id. at 944. At the time of defendant's sentencing in 1999, an offender qualified under the Act if the offense was an attempt to commit a capital, life, or first-degree felony violation of chapter 794. § 775.21(4)(c)1.b., Fla. Stat. (Supp. 1998).

The defendant argues that he is entitled to relief under Therrien, but he is incorrect. At the time of the sentencing in Therrien, attempts had not yet been added to the statute. At the time of this defendant's sentencing, the "attempt" provision had gone into effect. We therefore affirm the trial court's order on this issue, and affirm on the remaining issue without comment.

Affirmed.