

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

REGINALD V. DAVIS, JR.,

Appellant,

v.

Case No. 5D08-4371

STATE OF FLORIDA,

Appellee.

/

Opinion filed June 26, 2009

3.800 Appeal from the Circuit
Court for Marion County,
David B. Eddy, Judge.

Reginald V. Davis, Jr., Chipley, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

COHEN, J.

Appellant, Reginald Davis, challenges the trial court's denial of his postconviction motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm in part and reverse in part.

On June 23, 2004, Appellant pled guilty to three counts of sexual battery on a child under twelve by a person under eighteen years of age in violation of section 794.011(2)(b), Florida Statutes. The trial court sentenced him as a youthful offender

under section 958.04, Florida Statutes, to two years of incarceration followed by four years of sex offender probation and also designated him a sexual predator. At sentencing, the trial court authorized Appellant's participation in the boot camp program, and it is undisputed that he successfully completed the program. After Appellant admitted a violation of probation, the trial court revoked it in 2007 and sentenced him to concurrent five-year terms of incarceration with credit for time served.

Appellant subsequently filed the instant rule 3.800(a) motion, asserting that the five-year sentences were illegal because, as a youthful offender who had completed boot camp during his initial incarceration, he could be sentenced to no longer than 364 days in jail under the 2004 version of section 958.045(5)(c), which was in effect when he was originally sentenced.¹ He also asserted that he did not qualify for sexual predator designation. The trial court denied relief on both grounds.

In denying Appellant's argument that he was illegally sentenced, the trial court ruled that the sentence was legal under section 958.045(5)(c), as amended in 2006. This was erroneous because it violates the *ex post facto* clause of the Constitution. See Morrison v. State, 978 So. 2d 284, 285 (Fla. 4th DCA 2008) (applying 2006 amendment of section 958.045(5)(c), Florida Statutes, to youthful offender originally sentenced under earlier version of statute upon revocation of probation following successful completion of boot camp, violated *ex post facto* clause of Constitution); see also Adderly v. State, 958 So. 2d 997 (Fla. 5th DCA 2007); Fettler v. State, 885 So. 2d 411, 412 (Fla. 1st DCA 2004). Because the trial court imposed an illegal sentence, Appellant is entitled to resentencing under the pre-amendment version of section 958.045(5)(c).

¹ Appellant successfully completed the boot camp program before July 1, 2006, the effective date of the amendment to section 958.045(5)(c), Florida Statutes (2006).

The trial court did not err in designating Appellant a sexual predator. Because he was sanctioned as an adult, his criminal conviction triggered designation as a sexual predator. Cf. State v. J.M., 824 So. 2d 105, 108 n.4 (Fla. 2002) (an adult sentence is improper when a juvenile is charged as an adult, but sanctioned as a juvenile).

Accordingly, we affirm Appellant's designation as a sexual predator, but reverse his sentence following revocation of probation and remand for resentencing.

AFFIRMED in part, REVERSED in part, and REMANDED.

ORFINGER and LAWSON, JJ., concur.