

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CHRISTOPHER SIMMONS,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-2346

STATE OF FLORIDA,

Appellee.

Opinion filed December 31, 2009.

An appeal from the Circuit Court for Washington County.
Allen L. Register, Judge.

Christopher Simmons, pro se, Appellant.

Bill McCollum, Attorney General, and Jennifer J. Moore, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Christopher Simmons appeals an order denying his petition to remove the requirement that he register as a sexual offender which was filed pursuant to section 943.04354, Florida Statutes (2008). The trial court erroneously denied the petition based upon a finding that, because Simmons had been adjudicated guilty

of violating section 800.04, Florida Statutes (2000), he was ineligible for relief. See § 943.04354(1)(a) (permitting a defendant to seek relief if he was convicted of violating section 800.04 or if adjudication of guilt is withheld). We reverse and remand for further proceedings.

Section 943.0435, Florida Statutes (2000), provides that a defendant convicted of violating section 800.04, as well as other enumerated offenses, is automatically designated a sexual offender and required to comply with the registration requirements of the statute. However, section 943.04354 permits the defendant to petition the sentencing court for removal from the sex offender registry if he satisfies the criteria of that statute. Miller v. State, 17 So. 3d 778, 780 (Fla. 5th DCA 2009). Here, the trial court erroneously concluded Simmons was not entitled to relief because he had been adjudicated guilty of violating section 800.04 and did not consider the other requirements of the statute. Accordingly, we must reverse for further proceedings. Upon remand, should an evidentiary hearing be held, Simmons should be given an opportunity to participate. Scott v. State, 717 So. 2d 908, 912 (Fla. 1998).

REVERSED and REMANDED.

BARFIELD, VAN NORTWICK, AND CLARK, JJ., CONCUR.