NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

MICHAEL SHEPHERD, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D03-4040

Opinion filed August 3, 2005.

Appeal from the Circuit Court for Pinellas County; Philip J. Federico, Judge.

James Marion Moorman, Public Defender, and Jeffrey Sullivan, Special Assistant Public Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Anne Sheer Weiner, Assistant Attorney General, Tampa, for Appellee.

CASANUEVA, Judge.

Michael Shepherd appeals his convictions and sentences for two counts of lewd molestation of a child less than twelve years of age, a first-degree felony in violation of section 800.04(5), Florida Statutes (2001). He raises four issues; the State concedes error on one. We conclude there was no error on the first three issues and

decline to reach the fourth, the issue on which the State concedes error. We write briefly only to address the problem raised in the fourth issue.

We affirm the first three issues that Mr. Shepherd raises because we find no basis to reverse (1) the court's decision to admit evidence of prior bad acts pursuant to section 90.404(2)(b)(1), Florida Statutes (2001); (2) the court's decision to limit cross-examination of the Williams[1] rule witness; or (3) the court's order denying Mr. Shepherd's motion to suppress inculpatory statements he made to an investigating officer. It is the fourth issue, Mr. Shepherd's designation as a sexual predator, that presents a concern. See Coblentz v. State, 775 So. 2d 359 (Fla. 2d DCA 2000) (expressing uncertainty as to which vehicle of appellate review is available to defendants alleging improper designation as sexual predators).

When a person is convicted of certain sexual crimes, the order designating that person a "sexual predator" pursuant to section 775.21, Florida Statutes (2001), is technically civil in nature. See Collie v. State, 710 So. 2d 1000, 1006 (Fla. 2d DCA 1998) (holding that sexual predator status is not a portion of the sentence and thus is a finding that is civil in nature). The plain language of the statute speaks for itself: "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." § 775.21(3)(d). When the order is entered within thirty days of sentencing, we can review the order as adjunct to the direct criminal appeal, Downs v. State, 700 So. 2d 789 (Fla. 2d DCA 1997), because we have jurisdiction to do so by virtue of Florida Rule of Appellate Procedure 9.140(b)(1)(D), which grants appellate jurisdiction over criminal

[1] Williams v. State, 110 So. 2d 654 (Fla. 1959); see also McLean v. State, 854 So. 2d 796 (Fla. 2d DCA 2003).

court orders "entered after final judgment or finding of guilt." See State v. Robertson, 873 So. 2d 1205, 1208 (Fla. 2004). But the district courts of appeal do not agree as to how such an order should be reviewed. Compare Angell v. State, 712 So. 2d 1132 (Fla. 2d DCA 1998) (suggesting, in reviewing a denial of postconviction relief, that an action for declaratory relief might be the appropriate vehicle to challenge an erroneous designation as a sexual predator), and Coblentz, 775 So. 2d at 360 (questioning, in reviewing a denial of a motion to correct an illegal sentence, whether an indigent defendant has a right to court-appointed counsel to pursue an appeal of the civil finding of sexual predator status), with Nicholson v. State, 846 So. 2d 1217, 1219 (Fla. 5th DCA 2003) (holding that a designation as a sexual predator is part of the criminal sentencing process). Thus, reasons the Fifth District, such order is reviewable in a direct criminal appellate proceeding, if preserved, or by way of a motion filed pursuant to Florida Rules of Criminal Procedure 3.800(a), 3.800(b), or 3.850. Cabrera v. State, 884 So. 2d 482, 484 (Fla. 5th DCA 2004).

Here, however, the order designating Mr. Shepherd a sexual predator was entered more than thirty days after he was sentenced. After the jury returned a guilty verdict on both counts, the trial court sentenced him to two concurrent terms of twenty years' incarceration and declared him to be a sexual offender. A timely motion for new trial was denied and the notice of appeal was filed on August 27, 2003. Thereafter, on September 10, 2003, the State noticed its intent to have Mr. Shepherd declared a sexual predator. Although such designation had been discussed at his sentencing hearing, no designation was made at the time because there had been confusion about whether he qualified under the language of the statute. A hearing was held and the trial

court so designated him on October 20, 2003, modifying the previous order to reflect the new designation. Because the order was filed more than thirty days after the sentence was rendered, we follow our precedent and regard it as a collateral consequence of sentencing that has not been preserved for review in this direct criminal appeal.

Thus, we affirm the convictions and sentences without prejudice to Mr. Shepherd to petition for a declaratory judgment alleging that he was improperly designated a sexual predator, as was done in Jackson v. State, 893 So. 2d 706 (Fla. 2d DCA 2005) (reversing a summary denial of a petition for declaratory judgment questioning a sexual predator designation and remanding for review on the merits), or to file a motion pursuant to Florida Rule of Civil Procedure 1.540(b), as was done in Coblentz v. State, 855 So. 2d 681 (Fla. 2d DCA 2003) (appealed after remand and reversing a summary denial of a motion for relief from judgment and remanding for review on the merits). We also certify conflict with the Fifth District's decisions in Nicholson and Cabrera.

Affirmed.

STRINGER, J. and DANAHY, PAUL W., SENIOR JUDGE, Concur.