

Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed January 30, 2008.

No. 3D05-675
Lower Tribunal No. 87-35599B

Wilfredo Delgado,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Leonard E. Glick, Judge.

Bennett H. Brummer, Public Defender, and Thomas Regnier, Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Jill Kramer Traina, Assistant Attorney General, for appellee.

Before GERSTEN, C.J., and SUAREZ and CORTIÑAS, JJ.

On Motion for Rehearing

SUAREZ, J.

We grant the defendant's motion for rehearing, set aside the opinion of February 14, 2007, and substitute the following opinion:

The defendant appeals the denial of his motion under Florida Rule of Criminal Procedure 3.800(a) on grounds that his sentence was greater than that allowed by law due to the incorrect calculation of his scoresheet points. We affirm the trial court's denial of the defendant's 3.800(a) motion.

Acknowledging the concession by the State as to the correct calculation of the defendant's scoresheet, which would not have resulted in the lowering of his sentence, we hold that the validity of the reasons for the trial court's departure from the guidelines scoresheet sentence cannot be attacked by a 3.800(a) motion. Concepcion v. State, 944 So. 2d 1069 (Fla. 3d DCA 2006); Isom v. State, 915 So. 2d 183 (Fla. 3d DCA 2005); see also Wood v. State, 867 So. 2d 590 (Fla. 5th DCA 2004).

Therefore, the trial court was correct in denying the 3.800(a) motion.

Affirmed.