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

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

RUSSELL THRASHER,

Appellant,

v. Case No. 5D21-279

STATE OF FLORIDA,

Appellee.
_________________________________/

Opinion filed April 23, 2021

3.800 Appeal from the Circuit Court for Hernando County,
Stephen E. Toner, Jr., Judge.

Russell Thrasher, Cross City, pro se.

No Appearance for Appellee.

PER CURIAM.

Russell Thrasher appeals the summary denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Thrasher alleged that his prior out-of-state convictions of taking indecent liberties with a child were improperly scored at a higher severity level than permitted, resulting in an incorrect scoresheet and illegal

sentence. The lower court denied the motion, finding that nothing on the face of the record indicated that the out-of-state convictions were enhanced and that an evidentiary hearing would be necessary to compare the out-of-state convictions with any of Florida's comparable offenses. We affirm.

Thrasher was sentenced to five years' probation after pleading no contest to failure to comply with sex offender reporting requirements. After twice violating conditions of his probation, Thrasher's probation was revoked, and he was sentenced to 81.825 months in the Department of Corrections. Thrasher's sentencing scoresheet reflected that his out-of-state convictions were treated as convictions of Florida's lewd or lascivious battery.

Under rule 3.800(a), a court may correct an illegal sentence if the defendant can show an error on the face of the record establishing an entitlement to relief. Fla. R. Crim. P 3.800(a); see also Jackson v. State, 803 So. 2d 842, 844 (Fla. 1st DCA 2001). "[O]nly the elements of the out-of-state crime . . . should be considered in determining whether the conviction is analogous to a Florida statute for the purpose of calculating points for a sentencing guidelines scoresheet." Holybrice v. State, 753 So. 2d 621, 623 (Fla. 4th DCA 2000) (quoting Dautel v. State, 658 So. 2d 88, 91 (Fla. 1995)). "[A] trial court may consider an out-of-state charging document to determine which Florida offense is most analogous to the out-of-state conviction, but

this is true only when either the out-of-state statute under which the defendant was convicted or the potentially applicable Florida statutes contain multiple subsections." Bracey v. State, 109 So. 3d 311, 314 (Fla. 2d DCA 2013).

Here, the lower court would have had to examine the out-of-state charging document in order to have determined whether Thrasher's out-of-state convictions were analogous to a Florida offense. See Tyson v. State, 852 So. 2d 428, 429 (Fla. 2d DCA 2003) (stating that merit of rule 3.800(a) motion can only be determined by reference to record of proceedings in which challenged sentence was imposed). And because the elements of those convictions encompass a multitude of Florida sex offenses against children, which contain multiple subsections, the lower court could not have identified an error on the face of the record establishing an entitlement to relief. See Fla. R. Crim. P. 3.800(a). As the lower court properly recognized, an evidentiary hearing would have been necessary, and rule 3.800(a) does not provide for such a hearing.[1]

AFFIRMED.

COHEN, WALLIS and NARDELLA, JJ., concur.

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[1] The court could not have treated the motion as a Florida Rule of Criminal Procedure 3.850 motion because it would have been untimely.