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

DONALD LOWELL LUCAS, III

Appellant,

v.

Case No. 5D21-2403
LT Case No. 2000-CF-001202-AWS
2000-CF-001196-AWS

STATE OF FLORIDA,

Appellee.
________________________________/

Opinion filed December 17, 2021

3.800 Appeal from the Circuit Court
for Volusia County,
James R. Clayton, Judge.

Donald L. Lucas, III, Deland, pro se.

No Appearance for Appellee.

LAMBERT, C.J.

Donald Lowell Lucas, III, appeals the postconviction court's summary dismissal of his Florida Rule of Criminal Procedure 3.800(a) amended motion to correct illegal sentence. We affirm.

In October 2001, following his no contest plea in two cases below to separate charges of lewd or lascivious molestation of a child over the age of twelve but less than sixteen, Lucas was sentenced by the trial court to serve four years in prison on each charge, to be followed by four years of sex offender probation, with the sentences running concurrently.

Lucas completed his prison sentences on June 5, 2004, and thereafter began serving his terms of probation. In May 2008, shortly before his probation in each case was ending, Lucas was charged by affidavit with a non-criminal or technical violation of his probation. Lucas admitted to the violation; and in October 2008, the trial court extended his concurrent terms of probation, nunc pro tunc from June 5, 2008.

Lucas would later be charged with other violations of his probation, resulting in additional terms of probation and community control being imposed. Additionally, Lucas was designated as a sexual predator by the trial court in 2010 under section 775.21, Florida Statutes. The court would eventually revoke Lucas's probation in each case; and it sentenced him to serve concurrent seventy-two-month prison sentences, with appropriate awards of jail and prison credit.

In his present amended motion, Lucas argued that any sentences imposed by the trial court in his cases after June 4, 2008, for violating his

probation, together with his separate sexual predator designation, were illegal because the trial court lacked jurisdiction to do so. Lucas reasoned that, under *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016), his original term of probation was not tolled in May 2008 when the affidavit of violation of probation and the contemporaneous arrest warrant were issued because he was charged with a technical, non-criminal violation. Lucas asserted that since his probation continued to run and then to expire shortly thereafter on June 4, 2008, any sentences that were subsequently imposed for his violations of probation, as well as the sexual predator designation, occurred when the trial court no longer had jurisdiction over him in his cases.

The postconviction court dismissed Lucas's amended motion, finding it to be moot because Lucas had admittedly fully served his post-violation of probation prison sentences.[1] We agree. Even if we assume that Lucas is correct that any sentences that were imposed upon him after June 4, 2008, for violating his probation were illegal, once a defendant has served an invalid or illegal sentence to completion, the trial court cannot set it aside because the issue has become moot. *See Banks v. State*, 211 So. 3d 1104,

[1] Lucas acknowledged in his motion that he completed the seventy-two-month prison sentences "in [their] totality in March of 2015."

1106 (Fla. 5th DCA 2017) (citing *Maybin v. State*, 884 So. 2d 1174, 1175 (Fla. 2d DCA 2004)).

The postconviction court's order, however, did not specifically address Lucas's separate argument that his designation as a sexual predator in 2010 was also illegal. Although a sexual predator designation is considered a status, and not a punishment or sentence, a defendant is nevertheless permitted to seek correction of an allegedly erroneous sexual predator designation by filing a rule 3.800(a) motion to correct an illegal sentence in criminal court. *See Saintelien v. State*, 990 So. 2d 494, 496–97 (Fla. 2008). This motion can only be filed, though, if it is apparent from the face of the record that the defendant does not meet the criteria for designation as a sexual predator. *Id.* at 497.

Lucas did not raise this specific claim. Instead, as indicated, Lucas argued that the trial court lacked jurisdiction to enter the order in 2010 designating him to be a sexual predator because his probation, and thus his sentences, in each case had ended in 2008. The Florida Supreme Court has recently rejected this argument. *See State v. McKenzie*, 46 Fla. L. Weekly S271 (Fla. Sept. 23, 2021) (holding that a trial court does not lack jurisdiction to designate a defendant as a sexual predator after a defendant has completed serving his sentence).

Accordingly, because, as previously described, *Saintelien* only provides a narrow ground to use rule 3.800(a) to attempt to correct a sexual predator designation, which was not the ground alleged by Lucas for relief in his amended motion, we also affirm the postconviction court's order on this issue. Nevertheless, we do so without prejudice to Lucas raising the argument in a subsequent rule 3.800(a) motion that he does not qualify for his sexual predator designation, provided that he can file the motion in good faith.[2]

AFFIRMED.

EDWARDS and SASSO, JJ., concur.

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[2] As the question is not properly before us, we take no position as to whether Lucas actually qualifies for his sexual predator designation.