

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

JULY TERM 2003

FELIX SANTANA,

Appellant,

v.

CASE NO. 5D03-2616

STATE OF FLORIDA,

Appellee.

Opinion filed October 17, 2003

3.800 Appeal from the Circuit Court
for Orange County,
Frederick J. Lauten, Judge.

Felix Santana, Century, Pro Se.

No appearance for Appellee.

PER CURIAM

We affirm the defendant's sentence on the authority of *Hersey v. State*, 831 So. 2d 679 (Fla. 5th DCA 2002). *Accord Green v. State*, 832 So. 2d 199 (Fla. 4th DCA 2002). We certify conflict with *Green v. State*, 839 So. 2d 748 (Fla. 2d DCA 2003), *review granted*, *Franklin v. State*, Nos. SC03-413, SC03-532 (Fla. Sept. 19, 2003) (consolidating the appeals in *Green* and *State v. Franklin*, 836 So. 2d 1112 (Fla. 3d DCA 2003), to review interdistrict conflict).

AFFIRMED; CONFLICT CERTIFIED.

THOMPSON and MONACO, JJ., concur.

SAWAYA, C.J., concurs and concurs specially, with opinion.

SAWAYA, C.J., concurring and concurring specially.

I have previously expressed the reasons why I believe Hersey v. State, 831 So. 2d 679 (Fla. 5th DCA 2002), and its progeny are wrongly decided and why I believe the decision in Green v. State, 839 So. 2d 748 (Fla. 2d DCA), review granted, Franklin v. State, Nos. SC03-413, SC03-532 (Fla. Sept. 19, 2003) (consolidating the appeals in Green and State v. Franklin, 836 So. 2d 1112 (Fla. 3d DCA 2003), to review interdistrict conflict), is the correct statement of the law. Pena v. State, 853 So. 2d 1120 (Fla. 5th DCA 2003) (Sawaya, C.J., concurring and concurring specially); Fillyaw v. State, 853 So. 2d 590 (Fla. 5th DCA 2003) (Sawaya, C.J., concurring specially). Because Hersey is binding precedent in this district, I must concur in the majority opinion, albeit very reluctantly.