

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1236

BARRY LOCKLEAR III,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jan Shackelford, Judge.

August 12, 2020

PER CURIAM.

Appellant raises two issues on appeal of his conviction and sentence for attempted first-degree murder. He asserts the trial court erred in overruling his relevancy objection to the admissibility of evidence obtained during his arrest and by finding he qualified to be sentenced as a prison release reoffender (PRR) under section 775.082(9), Florida Statutes. We affirm both issues but write only to address the PRR designation.

Sentencing

At Appellant's initial sentencing hearing, the State offered a penitentiary packet from North Carolina (NC pen pack) and a letter from the North Carolina Department of Public Safety

(NCDPS) detailing Appellant's prison records and release date there. Appellant objected to introduction of the documents as constituting inadmissible hearsay. The lower court allowed the State a continuance, apparently to shore up its PRR evidence.

At the second sentencing hearing, the State offered as evidence the NC pen pack which included a notarized, signed Certification of Records by the custodian of records for the NCDPS, Sarah Llaguno. Also included was a certification signed under the North Carolina seal from N.C. Secretary of State, Elaine Marshall, that Llaguno is the Director of Records for the NCDPS and that Llaguno has under her care and custody the records of all current or former prisoners in the state. A signed letter from Llaguno certified that she has custody of all records of prisoners, including Appellant, and that the attached documents were made under her supervision and are correct reproductions of North Carolina's records now on file. Another signed letter from Llaguno, dated March 6, 2019 and addressed to the prosecutor, identified Appellant by name, ID number, race, and birth date; and detailed the sentences Appellant was serving and his release date from the NCDPS on January 4, 2016. Copies of Appellant's North Carolina prison records (OPUS) were also included. Each page displayed a signed stamp indicating certification that "the foregoing is an exact copy of the inmate movement record appearing in the files of" the records section of the NCDPS.

The defense objected, contending that pursuant to *Yisrael v. State*, 993 So. 2d 952 (Fla. 2008), the documents were inadmissible, and thus, the State failed to meet its burden of proving PRR status. The trial court overruled the objection and admitted the NC pen pack and other documents under section 90.902(1), Florida Statutes, the self-authenticating public record exception to the hearsay rule. The trial court found the State proved PRR status and sentenced Appellant to life in prison.

Legal Analysis

A trial court's admission of evidence is reviewed for abuse of discretion. *Lee v. State*, 268 So. 3d 904, 908 (Fla. 1st DCA 2019). As the State contends, the admission of the NC pen pack to satisfy the PRR statute would constitute an abuse of discretion if this

Court determines that the ruling is based on an erroneous legal interpretation or “a clearly erroneous assessment of the evidence.” *Salazar v. State*, 991 So. 2d 364, 373 (Fla. 2008) (quoting *Johnson v. State*, 969 So. 2d 938, 949 (Fla. 2007)).

Appellant characterizes the issue on appeal as “whether the release date letter written on March 6, 2019, qualified as a public record under section 90.803(8).” In admitting the packet, the lower court reasoned that the NC pen pack was a self-authenticating public record because the North Carolina seal being present on one of the documents brought all other included documents under the seal by reference. Appellant argues that the remaining documents cannot be said to be “under seal” as section 90.902, Florida Statutes, details that a document will be self-authenticating if it is “a document bearing” a seal. Here, Appellant claims that because only the single document “bears” a seal, the remaining documents cannot be incorporated by reference as section 90.902 requires that each document must itself bear the seal to be admitted as a self-authenticating record under section 90.902(1). We agree and determine that the lower court erred in finding that the documents were admissible as self-authenticating public records under seal.

That said, the documents do constitute self-authenticating public records “not bearing a seal but purporting to bear a signature of an officer or employee of [a department of a state], affixed in the officer’s or employee’s official capacity.” § 90.902(2), Fla. Stat. Appellant reasons that the documents can in no sense constitute a public record because the release date letter does not fall under either of the “activities based” or “matters observed” public records categories. The fatal flaw in Appellant’s argument is his assumption that there is no “crime and time report” included in the NC pen pack. As noted in *Yisrael*, such reports are regularly conducted prison activities; therefore, the reports are public records. *See Yisrael*, 993 So. 2d at 960. Here, the OPUS records in the NC pen pack are the equivalent of a crime and time report, reflecting prison movement records demonstrating that Appellant was released from confinement on January 4, 2016. *See Id.* Further, the OPUS report bears the signature of Llaguno, affixed in her capacity as custodian of the records. Thus, the report is a self-authenticating public record pursuant to sections 90.902(2) and 90.803(8).

Additionally, the combination of records constitutes a self-authenticating business record. As stated in *Yisrael*:

To secure admissibility under this exception, the proponent must show that (1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record.

Id. at 956; *see also* § 90.803(6)(a), Fla. Stat. Such a record will be deemed self-authenticating when accompanied by a “certification or declaration from the custodian of the records” certifying that the record:

- (a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters;
- (b) Was kept in the course of the regularly conducted activity; and
- (c) Was made as a regular practice in the course of the regularly conducted activity.

§ 90.902(11), Fla. Stat. Again, the OPUS records qualify as a record of regularly conducted activities of the NCDPS. Llaguno is the custodian of the Department’s records, and her certification encompasses the requirements of section 90.902(11).

Accordingly, we affirm the lower court’s determination of Appellant’s PRR status based on the NC pen pack. Although Appellant is correct that the trial court incorrectly determined that the entirety of the pen pack documents was under seal by reference, the court’s ruling that the pen pack constituted a self-authenticating public record was nonetheless correct based on Llaguno’s signature, affixed in her official capacity.

AFFIRMED.

LEWIS, WINOKUR, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jason Cromey of Cromey Law, P.A., Pensacola, for Appellant.

Ashley Moody, Attorney General, and Robert “Charlie” Lee, Assistant Attorney General, Tallahassee, for Appellee.