

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

LIONARDO GARCIA,)	
)	
Appellant,)	
)	
v.)	Case No. 2D01-4900
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed October 16, 2002.

Appeal from the Circuit Court for Pasco
County; Maynard F. Swanson, Jr.,
Judge.

Lionardo Garcia, pro se.

Robert A. Butterworth, Attorney
General, Tallahassee, and Ronald
Napolitano, Assistant Attorney General,
Tampa, for Appellee.

ALTENBERND, Judge.

Lionardo Garcia pleaded guilty to committing a lewd and lascivious act
pursuant to section 800.04(2), Florida Statutes (1999). The trial court sentenced Mr.

Garcia to five years' imprisonment. At the plea hearing, the court made no mention of designating Mr. Garcia a sexual predator. After Mr. Garcia was incarcerated, the Department of Corrections sent a letter to the court indicating that Mr. Garcia might be eligible for a sexual predator designation. A hearing was held on October 18, 2001, in which Mr. Garcia was incorrectly designated as a sexual predator. Mr. Garcia appeals the order designating him as a sexual predator.

Under section 775.21(4)(c)(1)(c), Florida Statutes (Supp. 1998), where the violation of section 800.04(02) is a second-degree felony, in order for the sexual predator designation to apply, the defendant must have a previous conviction with or without an adjudication of certain enumerated offenses. The State admits that Garcia does not have any prior convictions and that it was reversible error to designate him as a sexual predator. We reverse and remand to the trial court to remove the sexual predator designation.

Reversed and remanded.

SALCINES and STRINGER, JJ., Concur.