

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

June 6, 2003

JESUS MAGANA,)	
)	
Appellant,)	
)	
v.)	Case No. 2D02-162
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

BY ORDER OF THE COURT:

Appellant's motion for rehearing and motion for rehearing en banc is granted to the extent that the opinion dated April 23, 2003, is withdrawn and the attached opinion is substituted therefor. The motion is otherwise denied. No further motions for rehearing will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

c. John C. Fisher, Assistant Public Defender
Erica M. Raffel, Assistant Attorney General

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JESUS MAGANA,)	
)	
Appellant,)	
)	
v.)	Case No. 2D02-162
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed June 6, 2003.

Appeal from the Circuit Court for Polk County; J. Michael McCarthy, Judge.

James Marion Moorman, Public Defender, and John C. Fisher, Assistant Public Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Erica M. Raffel, Assistant Attorney General, Tampa, for Appellee.

STRINGER, Judge.

Jesus Magana seeks review of a judgment and sentence that imposed a ten-year armed drug trafficking minimum mandatory sentence pursuant to section 893.13(1), Florida Statutes (2000). That sentence appears to contain a scrivener's error because section 893.13 does not address minimum mandatory sentences. Magana

argues that the correct sentencing statute is section 893.135, Florida Statutes (2000), which was declared unconstitutionally enacted in Taylor v. State, 818 So. 2d 544 (Fla. 2d DCA), appeal voluntarily dismissed, 821 So. 2d 302 (Fla. 2002).

While Magana is correct that Taylor held section 893.135 to be unconstitutionally enacted, Magana's sentence is actually supported by section 775.087(2)(a)(1)(q), Florida Statutes (2000). Section 775.087(2)(a)(1)(q) provides for a minimum mandatory sentence of ten years for armed trafficking, and this section was unaffected by our decision in Taylor. Therefore, we affirm Magana's sentence but remand for the trial court to correct the judgment and sentence to reflect the proper statutory provision.

Affirmed and remanded.

NORTHCUTT and COVINGTON, JJ., Concur.