

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JAMES WALTER DAVIS, JR.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D03-5059
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed November 5, 2004.

Appeal from the Circuit Court for Hillsborough  
County; J. Rogers Padgett, Judge.

James Marion Moorman, Public Defender,  
and Judith Ellis, Assistant Public Defender,  
Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Katherine Coombs Cline,  
Assistant Attorney General, Tampa, for  
Appellee.

STRINGER, Judge.

James Walter Davis, Jr., seeks review of his convictions for the attempted second-degree murder, aggravated battery, and sexual battery of his ex-wife. Because Davis has failed to establish reversible error we affirm. However, two issues raised by Davis merit discussion.

First, Davis argues that the trial court erred in denying his motion for judgment of acquittal on the aggravated battery count because his convictions for both attempted second-degree murder and aggravated battery violate the double jeopardy prohibition against multiple punishments for the same offense. We conclude that convictions for both crimes do not violate the prohibition against double jeopardy because each of the offenses contains an element the other does not. See Gutierrez v. State, 860 So. 2d 1043, 1046 (Fla. 5th DCA 2003); Schirmer v. State, 837 So. 2d 587, 589 (Fla. 5th DCA 2003). But see Florida v. State, 855 So. 2d 109, 111 (Fla. 4th DCA), review granted, 861 So. 2d 431 (Fla. 2003) (holding that convictions for both crimes violate double jeopardy); Gresham v. State, 725 So. 2d 419, 420 (Fla. 4th DCA 1999) (same).

Second, Davis argues that his designation as a sexual predator violates his right to procedural due process, citing Espindola v. State, 855 So. 2d 1281 (Fla. 3d DCA 2003). However, this court has rejected that argument. See Milks v. State, 848 So. 2d 1167 (Fla. 2d DCA), review granted, 859 So. 2d 514 (Fla. 2003).

Affirmed.

NORTHCUTT, J., and DANAHY, PAUL W., SENIOR JUDGE, Concur.