

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

THOMAS WILLIAM HICKEY, )

Appellant, )

v. )

STATE OF FLORIDA, )

Appellee. )

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Case No. 2D05-898

Opinion filed October 12, 2005.

Appeal from the Circuit Court for Pasco  
County; Michael F. Andrews, Judge.

James Marion Moorman, Public Defender,  
and Kevin Briggs, Assistant Public Defender,  
Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Donna S. Koch, Assistant  
Attorney General, Tampa, for Appellee.

FULMER, Chief Judge.

Thomas William Hickey was convicted of lewd or lascivious molestation  
and subsequently designated a sexual predator by the trial court under section 775.21,  
Florida Statutes (2002). We reverse the trial court's order designating Hickey a sexual

predator because Hickey does not meet any of the criteria for the sexual predator designation delineated in section 775.21(4). The State concedes the error.

Hickey was convicted of lewd or lascivious molestation at the second-degree-felony level pursuant to section 800.04(5)(c)(2), Florida Statutes (2002). A person convicted under section 800.04 must meet either of two criteria to be designated a sexual predator under section 775.21(4). The first criterion is that the offense must be a first-degree felony violation, or attempt thereof, of section 800.04. § 775.21(4)(a)(1)(a). Hickey does not satisfy this criterion because his offense was a second-degree felony. Alternatively, the offense must be any felony violation, or attempt thereof, of section 800.04 and the offender must previously have been convicted of or pleaded to a violation of a crime specified in section 775.21(4)(a)(1)(b). Hickey does not satisfy this second criterion either because he was not shown to have been previously convicted of any of the specified predicate offenses.

Because Hickey meets neither of the statutory criteria, we reverse the trial court's order designating him a sexual predator and remand with directions to vacate the order.

WHATLEY and CANADY, JJ., Concur.