

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOSE LUIS CASTANEDA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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Case No. 2D05-943

Opinion filed March 15, 2006.

Appeal from the Circuit
Court for Lee County;
Thomas S. Reese, Judge.

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

Charles J. Crist, Jr., Attorney
General, Tallahassee, and Sonya
Roebuck Horbelt, Assistant
Attorney General, Tampa, for
Appellee.

WHATLEY, Judge.

Jose Luis Castaneda was convicted of committing a lewd or lascivious
battery on a child less than sixteen but older than twelve years of age in violation of
section 800.04(4)(a), Florida Statutes (2004). Thereafter, the trial court found that

Castaneda qualified for sexual predator designation pursuant to section 775.21, Florida Statutes (2004). Castaneda appeals the order designating him to be a sexual predator and the State concedes error.

In Hickey v. State, 915 So. 2d 663, 663 (Fla. 2d DCA 2005), this court held that in order to be designated a sexual predator under section 775.21(4), a person convicted under section 800.04 must meet either of two criteria. First, the offense must be a first-degree felony violation, or an attempt thereof, of section 800.04. Id. “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).” Id. In the present case, Castaneda was convicted of a second-degree felony violation of section 800.04(4)(a), and he had no previous convictions of the specified predicate offenses. Therefore, he did not meet the criteria for sexual predator designation.

Accordingly, we reverse the trial court order designating Castaneda a sexual predator and remand with directions to vacate the order.

Reversed and remanded.

DAVIS and SILBERMAN, JJ., Concur