Third District Court of Appeal

State of Florida

Opinion filed August 7, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2570
Lower Tribunal No. 06-43329

Weder Vilsaint,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Alan S. Fine, Judge.

Weder Vilsaint, in proper person.

Ashley Moody, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee.

Before HENDON, MILLER, and LOBREE, JJ.

HENDON, J.

Weder Vilsaint ("Defendant") appeals from the denial of his motion to correct an illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm.

In 1993, the Defendant plead guilty in Broward County case number 93-6649CF10B to one count of armed burglary and two counts of third degree grand theft. Adjudication was withheld and the Defendant was sentenced to two years of community control/probation, to terminate in June 1997. When the Defendant successfully completed his probation, the adjudication was withheld and the case was closed. In 2003, the Defendant was charged with new felony offenses in Miami-Dade County case number F03-14767. He plead guilty and was sentenced to five years in prison. In 2006, the Defendant was convicted on new felony charges of first degree murder, possession of a firearm by a convicted felon, armed burglary with assault or battery, among other serious offenses. His probation in case number F03-14767 was revoked, and he was sentenced in 2011 as a habitual felony offender based on his two prior offenses, one of which was the 1993 withhold of adjudication. His convictions and sentences were affirmed on direct appeal. Vilsaint v. State, 117 So. 3d 424 (Fla. 3d DCA 2012) (table).

In 2018, the Defendant filed a rule 3.800 petition, which is the subject of this appeal, in which he alleged his habitual felony offender status is illegal because the 1993 withhold of adjudication, one of the two predicate offenses required for

habitualization, could not be counted as a prior conviction for purposes of imposing a habitual offender sentence. The trial court denied relief.

The Defendant correctly observes that in 1993, a withhold of adjudication was not considered a "conviction" for purposes of imposing a habitual felony offender sentence unless the subsequent offense was committed during the probationary period. The version of the habitual offender statute at that time, section 775.084(2), Florida Statutes (1993), provided: "[F]or the purposes of this section, the placing of a person on probation without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which he is to be sentenced was committed during such probationary period." The record shows that by 1997, the Defendant successfully completed his probation, no adjudication of guilt was entered, and the case was closed.

The Defendant is incorrect, however, in his conclusion that the 1993 case could not be considered a conviction in 2011. In July 1999, well after the Defendant's 1993 case was closed, the habitual offender statute was amended to read that "the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction." § 775.084(2), Fla. Stat. (1999-present). When the Defendant reoffended in 2006, the statute – as it read since 1999 – specifically provided that withholds shall be considered convictions for purposes of imposing habitual offender sentencing. It is the habitual offender statute

in effect on the date of the commission of the offense that controls, and the trial court correctly counted the Defendant's 1993 withhold of adjudication as one of the two predicate sequential offenses required for imposing a habitual offender enhancement to the Defendant's current sentence. See Perkins v. State, 583 So. 2d 1103, 1105 (Fla. 1st DCA 1991) (holding that, as the appellant's enhanced punishment is an incident of his current offense, application of the statute in force at the time of his current offense does not violate the constitutional protection against ex post facto laws), approved and remanded, 616 So. 2d 9 (Fla. 1993); Bond v. State, 675 So. 2d 184, 185 (Fla. 5th DCA 1996) ("In the absence of clear legislative expression to the contrary, it is presumed that provisions added by an amendment affecting existing rights are intended to operate prospectively."). We therefore affirm the order on appeal.

Affirmed.