

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2003

LAERCY MACEO,

**

Appellant,

** CASE NO. 3D02-3242

vs.

**

THE STATE OF FLORIDA,

**

Appellee.

** LOWER TRIBUNAL
CASE NO. 97-17745

**

Opinion filed October 29, 2003.

An appeal from the Circuit Court of Miami-Dade County, Bertila Soto, Judge.

Bennett H. Brummer, Public Defender, and Howard K. Blumberg, Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General, and Roberta G. Mandel, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and FLETCHER and SHEVIN, JJ.

CONFESSION OF ERROR

PER CURIAM.

Laercy Maceo appeals from a trial court order designating him as a sexual predator pursuant to Section 775.21, Florida Statutes (2002). After a careful review of the record, and in accordance with the state's proper confession of error, we reverse.

Maceo was convicted of the life felony of armed kidnapping, in

violation of section 787.01, Florida Statutes (1997). The victim, however, was not a minor and therefore Maceo does not qualify for classification as a sexual predator as provided by section 775.21 (4) (a)1.a., Florida Statutes (2002)¹ based on a violation of section 787.01, Florida Statutes. The two counts of sexual battery with which Maceo was also charged and convicted were second-degree felonies. The information setting forth these charges specifically tracked the language of section 794.011(5) and defined sexual battery without the use of physical force or force likely to cause serious personal injury, and contained no allegation of use of a weapon. These do not meet the requirements of the sexual predator statute which requires that violations must be capital, life, or first degree felonies to qualify Maceo as a sexual predator. The state also points out that Maceo did not qualify for designation as a sexual predator under section 775.21(4) (a)1.b, Florida Statutes as he had not previously been convicted of, plead nolo or guilty to, or found to have committed any of the enumerated prior offenses which would qualify him for classification as a sexual predator. The trial court has erroneously designated Maceo as a sexual predator and that order must be reversed.

Reversed and remanded for proceedings consistent herewith.

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The Order finding the defendant a sexual predator was rendered November 13, 2002.