

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2011

OBTRAVIES ANDRE WATKINS,

Appellant,

v.

Case No. 5D10-1771

STATE OF FLORIDA,

Appellee.

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Opinion filed April 1, 2011

Appeal from the Circuit Court
for Flagler County,
Kim C. Hammond, Judge.

James S. Purdy, Public Defender, and
Michael S. Becker, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant challenges the order designating him a sexual predator. Appellant was adjudicated guilty under section 847.0135(3) and (4), Florida Statutes (2009). As the State properly concedes, neither of these violations are qualifying offenses under the Florida Sexual Predators Act, section 775.21, Florida Statutes. Thus, the trial court

erred in designating Watkins a sexual predator because he does not qualify for such a designation under the plain language of the Act.

Although conceding error, the State urges that we remand with instructions that Appellant be designated a sexual offender pursuant to section 943.0435, Florida Statutes. However, that section "contains no provision for a court order designating offenders as sexual offenders; they attain that status merely by virtue of their convictions." *Harvey v. State*, 17 So. 3d 890, 891 n.2 (Fla. 4th DCA 2009).

Accordingly, we reverse that portion of the order that designates Appellant a sexual predator and remand with instructions that the designation be stricken from the judgment.

REVERSED AND REMANDED.

PALMER, TORPY and COHEN, JJ., concur.