

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed January 07, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-1396

Lower Tribunal No. 06-42016

The State of Florida,
Appellant,

vs.

Tyrone Davis,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Rosa I. Rodriguez, Judge.

Bill McCollum, Attorney General, and Timothy R.M. Thomas, Assistant Attorney General, for appellant.

Carlos J. Martinez, Public Defender, and Robert Godfrey, Assistant Public Defender, for appellee.

On Motion for Rehearing

Before GERSTEN, C.J., and SUAREZ and ROTHENBERG, JJ.

PER CURIAM.

We grant the appellant's motion for rehearing, withdraw our former opinion dated November 19, 2008, and substitute the following opinion in its stead.

The State appeals the sentence imposed in the instant case entered pursuant to a plea offered by the trial court to the defendant over the State's objection. Because the record reflects that: (1) the sentence imposed was a downward departure from the sentencing guidelines; (2) the trial court failed to provide any grounds for imposing a downward departure; and (3) the State timely objected to the imposition of a departure from the sentencing guidelines, we reverse and remand with directions to the trial court to vacate the judgment and sentence and permit the defendant to withdraw his plea. See State v. Berry, 976 So. 2d 645 (Fla. 3d DCA 2008) (holding that the absence of valid reasons for departure, requires reversal and remand for resentencing or withdrawal of the defendant's plea). This ruling does not preclude the imposition of a sentence that departs from the sentencing guidelines, and is supported by valid grounds for the departure.

Reversed and remanded.