

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed May 6, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-645
Lower Tribunal No. 07-23149

The State of Florida,
Appellant,

vs.

James Green,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

Bill McCollum, Attorney General, and Heidi Milan Caballero, Assistant Attorney General, for appellant.

Carlos J. Martinez, Public Defender, and Howard K. Blumberg, Assistant Public Defender, for appellee.

Before COPE, SHEPHERD, and SUAREZ, JJ.

COPE J.

The State of Florida (the “State”) appeals defendant-appellee James Green’s downward departure sentence. We affirm.

The State claims that the downward departure sentence of defendant Green was error because the State objected to the sentence and the trial court failed to provide written reasons in support of the downward departure. The defendant argues that the matter was not properly preserved by an objection which was sufficiently precise to fairly inform the trial court of the error. We agree with the defendant.

During the defendant’s trial, as the court was about to rule on the admissibility of a key piece of evidence, the court inquired about what plea offers had been extended in the case. The State extended two alternative offers. Neither was accepted by the defendant, but the defendant said that he would accept thirty months in prison. There was then a sidebar conference after which the following exchange took place:

[DEFENSE COUNSEL]: My client will take 36 months.

THE COURT: All right. Stand up.

[DEFENSE COUNSEL]: Does he get credit for the time he’s served, Judge?

THE COURT: Yes, and as an HO with modalities.

[STATE]: For the record, I'd say the State did try to withdraw from negotiations. We offered five years or three years followed by three years and HO and this is--

THE COURT: Okay.

[STATE]: -- but we did withdraw --

THE COURT: Okay. After I offered it you withdrew.

The court then sentenced defendant to thirty-six months incarceration as a habitual felony offender. The defendant's guidelines sentence was eighty-four months incarceration.

The State has appealed, arguing that the sentence was a downward departure without departure reasons. We affirm the sentence because the State failed to preserve the issue in the trial court. As we have previously stated, to properly preserve the issue, the State must call the court's attention to the need for downward departure reasons with a proper objection. See State v. Merriweather, 875 So. 2d 1283, (Fla. 3d DCA 2004); State v. Henriquez, 717 So. 2d 1087 (Fla. 3d DCA 1998); see also State v. Golkiewicz, 930 So. 2d 862 (Fla. 4th DCA 2006). The State did not object to the downward departure and did not request reasons for the downward departure. The State merely withdrew from negotiations.

Affirmed.