

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

JANUARY TERM 2013

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D12-4131

ANDREW JOSEPH FOSTER,

Appellee.

_____ /

Opinion filed May 31, 2013

Appeal from the Circuit Court
for Volusia County,
R. Michael Hutcheson, Judge.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellant.

Paula C. Coffman, and Jeffrey D. Deen,
Office of Criminal Conflict & Civil Regional
Counsel, Orlando, for Appellee.

PER CURIAM.

The State appeals the trial court's order withholding adjudication on Andrew Joseph Foster's first-degree felony conviction.¹ The withhold of adjudication was entered after Foster entered an open no-contest plea to the sale or possession of a controlled substance with intent to sell within 1000 feet of a school or child care facility.

¹ Appellate review is authorized under rule 9.140(c)(1)(L) of the Florida Rules of Appellate Procedure.

See § 402.302, Fla. Stat. (2010). Commendably, Foster concedes error, based upon the plain language of section 775.08435(1)(a), Florida Statutes (2012), which prohibits a court from withholding an adjudication of guilt upon a defendant who commits a first-degree felony, and State v. Joseph, 995 So. 2d 1182 (Fla. 2nd DCA 2008) (recognizing that section 775.08435(1)(a) prohibits trial courts from withholding an adjudication of guilt on a defendant convicted of a first-degree felony). See also State v. Ketchum, 38 Fla. L. Weekly D299 (Fla. 3d DCA Feb. 6, 2013).

Accordingly, we reverse the trial court's withhold of adjudication and remand for entry of an adjudication of guilt.

REVERSED and REMANDED.

GRIFFIN, PALMER and TORPY, JJ., concur.