

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2008*

**ARTHUR ANDREW,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-1258

[August 6, 2008]

PER CURIAM.

Arthur Andrew (“Andrew”) entered an open guilty plea to burglary of a dwelling with a battery and strong arm robbery, and was sentenced to 6.25 years in prison, followed by 5 years of drug offender probation. He appeals the denial of his motion to correct illegal sentence, in which he challenged the trial court’s authority to impose the drug offender aspect of his probation.

“A defendant may not be sentenced to drug offender probation unless he has been convicted of an enumerated chapter 893 offense or he has specifically agreed to such probation in a plea agreement.” *Ackermann v. State*, 962 So. 2d 407, 408 (Fla. 1st DCA 2007) (reversing summary denial of rule 3.800(a) motion); *accord Anderson v. State*, 941 So. 2d 446 (Fla. 4th DCA 2006); *Parker v. State*, 839 So. 2d 736 (Fla. 1st DCA 2003); see also § 948.034, Fla. Stat (2003). However, a court may impose special conditions of probation which are desirable for rehabilitation. *Biller v. State*, 618 So. 2d 734 (Fla. 1993). “In determining whether a condition of probation is reasonably related to rehabilitation, . . . a condition is invalid if it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.” *Id.* at 734-35 (quoting *Rodriguez v. State*, 378 So. 2d 7, 9 (Fla. 2d DCA 1979)).

During his sentencing hearing, Andrew admitted he was an addict. However, we are unable to determine from the record whether those conditions associated with drug offender probation are reasonably

related to Andrew's rehabilitation and, therefore, would be appropriate special conditions of probation under the *Biller* test. Accordingly, we reverse only that portion of Andrew's sentence which imposes drug offender probation, with leave for the trial court to substitute a term of probation with or without special conditions related to substance abuse; provided such special conditions satisfy the *Biller* test.

*Reversed and Remanded.*

SHAHOOD, C.J., STONE and DAMOORGIAN, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael L. Gates, Judge; L.T. Case No. 04-9912CF10A.

Michael R. Ohle of Ohle & Ohle, Fort Pierce, for appellant.

Bill McCollum, Attorney General, Tallahassee, and August Bonavita, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***