

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

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

ANTHONY JORDAN BEIBER,

Appellant,

v.

Case No. 5D18-2833

STATE OF FLORIDA,

Appellee.

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Opinion filed October 25, 2019

Appeal from the Circuit Court  
for Orange County,  
Dan Traver, Judge.

James S. Purdy, Public Defender, and  
Danielle Renee Rufai, Assistant Public  
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Nora Hutchinson Hall,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

JACOBUS, B.W., Senior Judge.

Anthony Jordan Beiber (Appellant) was charged by information in Orange County, Florida, with armed burglary of a dwelling with a firearm (Count I), and robbery with a firearm (Count II). Appellant entered into a plea agreement with the State and received a youthful offender sentence of 30 months in the Department of Corrections (DOC)

followed by 36-months' probation. Appellant's probation supervision commenced in February 2016.

In July 2018, Appellant violated his probation. He entered into an admission/no contest plea to the charge of violation of probation. The court accepted Appellant's plea. It found that he had violated Condition 3 of his probation once and Condition 5 of his probation twice and revoked and terminated his probation. Appellant was adjudicated guilty of the underlying offense and sentenced to nine years in the DOC with credit for time served. The court retained Appellant's youthful offender status as it provides additional services available with DOC that would not ordinarily be provided without the youthful offender status.

Appellant contends that the sentence is illegal as it exceeds the maximum sentence a person can receive for violation of probation while on youthful offender probation. We agree and reverse the sentence.

In Eustache v. State, 248 So. 3d 1097, 1102 (Fla. 2018), the Florida Supreme Court held that when the trial court retains an offender's youthful offender status following a violation of probation or community control, the maximum permissible sentence pursuant to section 958.04(1)–(2), Florida Statutes (2005), is six years. Accordingly, the sentence is reversed and remanded to the trial court to enter a sentence up to the maximum of six years.

REVERSED and REMANDED.

ORFINGER, J., concurs.

COHEN, J., concurs with opinion.

COHEN, J., concurring with opinion.

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I concur. In support of affirmance, the State argues that Beiber failed to preserve the error. However, it notes that substantively, Beiber's position is correct and that the imposition of an illegal sentence constitutes fundamental error. See Maddox v. State, 760 So. 2d 89, 101 (Fla. 2000) ("[A]n unpreserved error resulting in a sentence in excess of the statutory maximum should be corrected on direct appeal as fundamental error.").

In fairness to the trial court, Eustache v. State, 248 So. 3d 1097 (Fla. 2018), which reversed the previously existing law in the district, was decided less than one month before Beiber's sentencing, and neither party brought that case to the trial court's attention.