

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 HODGES,

Appellant,

v.

Case No. 5D19-2089

STATE OF FLORIDA,

Appellee.

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Opinion filed February 14, 2020

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

James S. Purdy, Public Defender, and  
Joseph Chloupek, Assistant Public  
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Kaylee D. Tatman,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

EVANDER, C.J.

Anthony Hodges appeals an order summarily denying his motion to withdraw plea. He argues that the trial court erred in not granting him an evidentiary hearing on his motion. We agree.

Hodges appeared before the trial court for a plea/sentencing hearing on a violation of probation (VOP) charge and two new offenses. Counsel advised the trial court that a plea agreement had been reached that would resolve all three cases. Hodges first admitted to violating his probation on the VOP charge and, pursuant to the plea agreement, was sentenced to 41.78 months in prison with credit for 274 days' time served. He then entered a no contest plea on his two new offenses. In lower court case number 2019-CF-6946, the only case that was the subject of Hodges' motion to withdraw plea, he was sentenced to 41.78 months in prison to run concurrent with his sentence in the VOP case. Hodges received credit for 31 days' time served on this charge.

In his motion to withdraw plea, Hodges alleged that, prior to sentencing, his attorney told him that he would receive a "time served" sentence in case number 2019-CF-6946. The trial court denied the motion, finding that Hodges' claim was refuted by the plea colloquy.

It is unnecessary to set forth the entirety of the dialogue between counsel and the trial court as to the terms of the plea agreement. It is sufficient to state that defense counsel's recitation of the sentence to be imposed in case number 2019-CF-6946 was not a model of clarity. Furthermore, the written plea agreement executed by Hodges is supportive of his claim. Accordingly, we conclude that the allegations set forth in Hodges' motion to withdraw plea were not refuted by the record. We would further observe that when a plea agreement calls for a specified sentence and the trial court determines to impose a greater sentence, the defendant has the right to withdraw the plea. *T.H. v.*

*State*, 965 So. 2d 237, 238 (Fla. 5th DCA 2007). Accordingly, we reverse and remand for an evidentiary hearing on Hodges' motion to withdraw plea.<sup>1</sup>

REVERSED and REMANDED.

HARRIS and GROSSHANS, JJ., concur.

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<sup>1</sup> We reject the State's argument that Hodges' motion was untimely filed. A defendant may file a motion to withdraw plea within thirty days after rendition of the sentence. Fla. R. Crim. P. 3.170(l). Hodges' sentence was rendered on Friday, June 14, 2019. Because that day was a Friday, the thirty-day period began to run the following Monday, June 17, 2019. See Fla. R. Jud. Admin. 2.514(a)(1)(A); Fla. R. Crim. P. 3.040. Thus, the thirty-day period ended on July 16. Because Hodges filed his motion pro se from the prison reception center, it was considered filed when he placed it into the hands of prison officials for mailing, which the record indicates was no later than Monday, July 15, 2019. See *Haag v. State*, 591 So. 2d 614, 617 (Fla. 1992); *Linville v. State*, 260 So. 3d 440, 442 (Fla. 5th DCA 2018). The clerk received the motion the next day, July 16, 2019. Accordingly, Hodges' motion was timely filed.