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

CHANEL CRUZ,

Appellant,

v. Case No. 5D20-228

STATE OF FLORIDA,

Appellee.

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Opinion filed September 18, 2020

Appeal from the Circuit Court
for Brevard County,
Nancy Maloney, Judge.

James S. Purdy, Public Defender, and Robert Jackson Pearce lll, Assistant Public Defender, Daytona Beach, for Appellant.

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

COHEN, J.

Chanel Cruz appeals the trial court's order adjudicating her guilty and sentencing her to a term of five years in the Department of Corrections. In the underlying proceedings, Cruz entered pleas in two cases pursuant to a plea agreement. The agreement called for a sentence of fourteen months.

Following her plea, Cruz requested to be released from custody to get her affairs in order. The trial court granted Cruz's request and explained to her the conditions of a Quarterman's release.[1] Cruz was informed that she was not to get arrested or otherwise violate any laws and was to reappear for sentencing at a specified date and time. The trial court explained to Cruz that if she violated the terms of her release, the agreed-to sentence of fourteen months would not be binding, she could be sentenced up to the statutory maximum, and that she would not be entitled to withdraw her plea as a result of the imposition of a longer sentence.

When Cruz did not reappear for sentencing, she was arrested pursuant to an arrest warrant. The State moved for the trial court to find that Cruz violated the Quarterman's release. Following a hearing on the motion, the trial court found that she had violated the Quarterman's release and sentenced her to five years in the Department of Corrections. This appeal followed.

On appeal, Cruz challenges the trial court's failure to find that her violation was willful. However, we find that Cruz did not properly preserve that issue for appeal. At the hearing, when the prosecutor represented that Cruz was not contesting the violation of the Quarterman's release, Cruz acknowledged that she had failed to appear for sentencing but explained that her transportation to the courthouse did not "follow through," which forced her to rely on public transportation. Cruz claimed she had her mother call both her lawyer and the judicial assistant to inform them that she was running late. By the time she arrived, the courtroom doors were locked, and her efforts to turn herself in were unsuccessful.

[1] Quarterman v. State, 527 So. 2d 1380 (Fla. 1988).

Notably, despite Cruz's statements as to why she failed to appear, Cruz's lawyer did not argue that the violation was not willful, despite verifying that Cruz had in fact contacted the office of the public defender.[2] There was good reason for not doing so. While Cruz might have appeared for her sentencing at some point on the scheduled date, she subsequently failed to turn herself in for two months. Instead, counsel argued:

> Your Honor, at this time, I'm asking the Court to consider the totality of the circumstances. I do believe that there needs to be some sanction. I don't believe it needs to be five years consecutive on three different third degree felony counts. Ms. Cruz does apologize to the Court. She does not make an excuse for—for the inconvenience it did cause to the Court. She understands that at this point the Court has no restriction in terms of the maximum it can impose, other than the statutory limitations. But Your Honor, this is a case where there was a failure to appear. There were no other—it wasn't like she was committing crimes during—during that absence, and she does truly apologize. At this time, we'd ask the Court to consider a lesser sentence than what the State's asking for and ask the Court to consider everything in the totality of the circumstances: Her apology, the fact that there was a failure to appear, and no other allegations in terms of the Quarterman violation, as well as what the charges are.

That argument was somewhat successful, as Cruz received a sentence in between the statutory maximum and the term provided for in the plea agreement.

During the pendency of the appeal, Cruz filed a motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). For the first time, Cruz challenged the absence of any finding that the violation of her Quarterman's release was willful. The trial court denied the motion, finding that Cruz had stipulated to the violation and that her argument at the hearing only requested leniency.

[2] The record does not specify the nature and timing of the contact.

It is well established that a violation of a Quarterman's release must be willful. See, e.g., Ingram v. State, 291 So. 3d 1009, 1011–12 (Fla. 5th DCA 2020). However, as recognized by the trial court, Cruz only requested leniency; she did not challenge the trial court's failure to make a willfulness finding.[3] See State v. Garza, 118 So. 3d 856, 857 (Fla. 5th DCA 2013) (noting that objections must be reasonably specific so as to inform court of perceived error). Further, such an error does not fall within the purview of a sentencing error under rule 3.800(b). Accordingly, we affirm.

AFFIRMED.

ORFINGER and EISNAUGLE, JJ., concur.

[3] The issue of whether a Quarterman violation was willful is reviewable on direct appeal. Peacock v. State, 77 So. 3d 1285 (Fla. 4th DCA 2012).