

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-1316

SAMUEL WYNDHAM REAGER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Brantley S. Clark, Jr., Judge.

November 8, 2019

WINOKUR, J.

Serving multiple prison sentences, including one lasting the rest of his natural life, Samuel Reager argues that a forty-year minimum mandatory sentence imposed on one count is longer than the statute allows. This argument is unpreserved, so we affirm.

Among other crimes, the State charged Reager with attempted first-degree murder of a law enforcement officer while discharging a firearm and causing great bodily harm, and robbery while possessing and discharging a firearm. Officer David Brady of the Florida Fish and Wildlife Conservation Commission, working in his patrol boat at a state park, responded to a report and pulled alongside a sailboat. Officer Brady asked the two men onboard for identification and paperwork, and Reager went to the cabin to retrieve the boat's registration. Officer Brady turned around to grab a piece of paper and when he turned back, Reager

was pointing a gun at his face. Officer Brady attempted to jump for the water, but was shot twice. Reager continued shooting while Officer Brady was in the water and the two exchanged fire until Reager jumped in the patrol boat and drove at Officer Brady, narrowly missing him. Reager then drove off, leaving Officer Brady clinging to the sailboat's anchor line, shot and with a deflated life jacket, until he was picked up by the Coast Guard.

Reager was found guilty of attempted first-degree murder while possessing and discharging a firearm and causing great bodily harm, and sentenced to life in prison. Reager was also convicted of armed robbery while possessing and discharging a firearm, and the trial court imposed a forty-year minimum mandatory sentence. After Reager appealed his judgment and sentence, he filed a motion to correct sentencing error, *see* Fla. R. Crim. P. 3.800(b)(2), arguing that his life sentence was unconstitutional because, although he was eighteen at the time of his crimes, his brain had not fully matured. The trial court properly rejected this argument.*

In his initial brief, Reager argues that his forty-year minimum mandatory sentence for armed robbery while possessing and discharging a firearm is greater than that allowed by statute. *See* § 775.087(2)(a)2., Fla. Stat. However, Reager failed to raise this argument at sentencing or in his Rule 3.800(b)(2) motion. *See* Fla. R. App. P. 9.140(e) (“A sentencing error may not be raised on appeal unless the alleged error has first been brought to the attention of the lower tribunal” during sentencing or by Rule 3.800(b) motion.). In *Hope v. State*, 134 So. 3d 1044, 1046 (Fla. 1st DCA 2013), the defendant asserted that illegal mandatory minimum sentences were imposed, and we held that we “cannot consider these claims on the merits because they were not preserved for appellate review by a contemporaneous objection or a rule 3.800(b)(2) motion.” Reager asserts that his case is distinguishable from *Hope* because his forty-year minimum mandatory sentence was a scrivener's error that should simply be corrected to reflect the oral pronouncement. In fact, the supreme

* *See Farmer v. State*, 268 So. 3d 1009, 1011 (Fla. 1st DCA 2019). We reject Reager's argument on this issue on appeal, as well as his argument that he was not permitted to cross-examine a State witness.

court has recognized that claims “that the written order deviated from the oral pronouncement” raise sentencing errors subject to Rule 9.140(e). *Jackson v. State*, 983 So. 2d 562, 572 (Fla. 2008); *see also Daniels v. State*, 118 So. 3d 996, 997 (Fla. 1st DCA 2013) (“Claims that the written judgment and sentence do not conform to the oral pronouncement must be preserved either with a contemporaneous objection, if possible, or by filing a Florida Rule of Criminal Procedure 3.800(b)(2) motion before filing the initial brief.”). Reager filed a Rule 3.800(b)(2) motion, but failed to include the argument he now makes, so we may not review it. Reager’s remedy, if any, must be by postconviction claim.

AFFIRMED.

B.L. THOMAS and MAKAR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Hilliard E. Moldof, Fort Lauderdale, for Appellant.

Ashley Moody, Attorney General, and Virginia Chester Harris, Assistant Attorney General, Tallahassee, for Appellee.