FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1518

JENNIFER SCHULTE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Angela M. Cox, Judge.

August 4, 2021

PER CURIAM.

Jennifer Schulte pleaded guilty to the kidnapping, armed robbery, and second-degree murder of an 86-year-old victim. The trial court conducted Schulte's sentencing hearing jointly with her two co-defendants. Before announcing Schulte's sentence, the trial court listed the mitigating and aggravating factors that applied to Schulte specifically, as well as those that applied to all three defendants. The trial court sentenced Schulte to forty years in prison. Schulte moved under Florida Rule of Criminal Procedure 3.800(c) to have her sentence reduced, arguing that the sentence was too long for her minor role in the crime. The trial court denied the request.

On appeal, Schulte argues the trial court erred by conducting her sentencing hearing jointly with her co-defendants. She claims that, because the trial court used the "language of death penalty sentencings," Schulte was entitled to the same procedural protections as if it had been a death penalty sentencing. One such protection Schulte points to is a capital defendant's right to an individualized sentencing determination. Because Schulte failed to raise and preserve this issue below, any error must be fundamental. *See Jackson v. State*, 983 So. 2d 562, 574 (Fla. 2008). "A fundamental error is one that 'goes to the foundation of the case or goes to the merits of the cause of action.'" *Jaimes v. State*, 51 So. 3d 445, 448 (Fla. 2010) (quoting *Sanford v. Rubin*, 237 So. 3d 134, 137 (Fla. 1970)).

First, Schulte's arguments lack legal support. She cites nothing for the contention that the trial court's use of the "language of death penalty sentencings" implicates the procedural protections available to defendants facing the death penalty. Then, Schulte points to *Lockett v. Ohio*, 438 U.S. 586 (1978), to argue that capital defendants are entitled to individualized sentencing determinations and that her joint sentencing violated that right. But "*Lockett* and its progeny do not address joint penalty phases or say that the presence of a co-defendant at a capital defendant's penalty phase trial has any Eighth Amendment implications whatsoever." *Puiatti v. McNeil*, 626 F.3d 1283, 1315 (11th Cir. 2010). Rather, "[t]he core substantive ingredient in the constitutional right to an 'individualized sentencing' is mitigation evidence relevant to the capital defendant as an individual or unique person." *Id.* at 1314.

Moreover, on the record before us, the joint sentencing here did not deprive Schulte of an individualized sentencing determination. The trial court stated the mitigating and aggravating factors it found for Schulte individually before describing those that applied to all three defendants. Because the court considered "mitigation evidence relevant to the . . . defendant as an individual or unique person," Schulte received an individualized sentencing determination. *See id.* at 1315. Thus, Schulte has not shown the trial court erred by conducting a joint sentencing hearing, let alone fundamentally so.

AFFIRMED.

B.L. THOMAS, BILBREY, and NORDBY, JJ., concur.

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

H. Kate Bedell of Bedell & Kuritz, P.A., Jacksonville, for Appellant.

Ashley Moody, Attorney General, and Sharon Traxler, Assistant Attorney General, Tallahassee, for Appellee.