

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3340

ANTWAND HOWARD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Angela C. Dempsey, Judge.

November 9, 2022

B.L. THOMAS, J.

Antwand Howard appeals his sentence imposed on remand following his direct appeal. *See Howard v. State*, 278 So. 3d 910 (Fla. 1st DCA 2019). Howard raises two arguments regarding the denial of his request for a downward departure sentence. We affirm his sentence for the following reasons.

As a threshold matter, Howard failed to adequately preserve his arguments for appeal. After the trial court imposed two 15-year concurrent sentences, Howard failed to raise any concerns with the court's ruling during the resentencing hearing or in his subsequent motion to correct sentencing error. Under Florida Rule of Appellate Procedure 9.140(e), a defendant may not raise a sentencing error on direct appeal unless there was a

contemporaneous objection to the error, or the error was the subject of a rule 3.800(b) motion. *See Jackson v. State*, 983 So. 2d 562, 569 (Fla. 2008) (explaining that “for sentencing errors, to raise even fundamental error on appeal, defendants must first file a motion under rule 3.800(b)”).

Additionally, this Court lacks authority to review a trial court’s decision denying a downward departure, where there is no evidence that the trial court misconstrued its discretion to depart or had a blanket policy of refusing to exercise such discretion. *See Wilson v. State*, 306 So. 3d 1267 (Fla. 1st DCA 2020); *Clark v. State*, 315 So. 3d 776 (Fla. 1st DCA 2021).

ROWE, C.J., and LONG, JJ., concur.

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

Jessica J. Yeary, Public Defender, and John Knowles and Richard M. Bracey, III, Assistant Public Defenders, Tallahassee, for Appellant.

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