DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

DANIEL CLOUGH,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D12-2489

[May 21, 2014]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William L. Roby, Judge; L.T. Case No. 432011CF000066B.

Carey Haughwout, Public Defender, and John M. Conway, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Laura Fisher, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Appellant pled to the charges against him after the court denied his motion to suppress. Although all parties stipulated that the ruling on the motion to suppress was dispositive, appellant failed to reserve his right to appeal this issue.

"A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved." Fla. R. App. P. 9.140(b)(2)(A)(i). "[A] defendant who pleads nolo contendere with no express reservation of the right to appeal a legally dispositive issue, shall have no right to a direct appeal." § 924.06(3), Fla. Stat. (2011) (emphasis added). "Thus, without both an express reservation of the right to appeal *and* a finding that the issue is dispositive, through either a trial court's ruling or a stipulation by the state, a defendant who pleads guilty or nolo contendere has no right to a direct appeal." *Pamphile v. State*, 65 So. 3d

107, 108 (Fla. 4th DCA 2011); *see also Renna v. State*, 96 So. 3d 1039 (Fla. 4th DCA 2012).

In the present case, the written plea agreement signed by appellant, defense counsel, and the prosecutor stipulated that the denial of his motion to suppress was dispositive. The prosecutor also orally agreed to this stipulation during the plea colloquy. Yet appellant did not expressly reserve his right to appeal the denial of the motion, either in the written plea agreement or during his oral plea colloquy. *See Pamphile*, 65 So. 3d at 109 (finding that, even though in that case "a finding of dispositiveness is essentially presumed" due to the nature of the charges, appellant's "attorney's failure to expressly reserve right to appeal the denial of the suppression motion is fatal").

In the present case, the plea agreement provided: "I am giving up my right to appeal all matters connected with the judgment and sentence, including the issue of guilt or innocence." It authorized appellant to appeal only a void or voidable judgment, or a sentence in violation of the Sentencing Guidelines. During the plea colloquy, the court and appellant had the following exchange:

> BY THE COURT: Do you understand you filed a Motion to Suppress apparently that was already ruled upon and that's dispositive, but there is no more chances of filing more motions to suppress or to suppress or if you felt like the police acted improperly in the case. The case is over. The only thing you could challenge is if Judge Roby gives you an illegal sentence or if you wanna challenge your attorney for his representation. Do you understand that?
>
> BY MR. CLOUGH: Yes sir.

At appellant's sentencing hearing, the court advised him he had thirty days to appeal his sentence but did not mention any appeal of the motion to suppress.

Because appellant failed to reserve his right to appeal the dispositive issue, the judgment below is affirmed. *See Leonard v. State*, 760 So. 2d 114, 119 (Fla. 2000) ("[T]he district courts should affirm summarily . . . when the court determines that an appeal does not present . . . a legally dispositive issue that was expressly reserved for appellate review . . . .").

Affirmed.

WARNER, LEVINE, JJ., and TUTER, JACK, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.