

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GEORGE SIMMONS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-1040

[May 10, 2017]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barbara McCarthy, Judge; L.T. Case No. 12-16699CF10A.

Carey Haughwout, Public Defender, and Patrick B. Burke, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Matthew Steven Ocksrider, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

We affirm appellant's sentence entered after an open plea to the court on charges of violation of community control, without prejudice to seek postconviction relief.

We note that it was not necessary for the court to conduct a "danger hearing" pursuant to section 948.06(8)(d), Florida Statutes (2016) because appellant did not meet any of the statutory criteria that trigger the necessity for such a hearing. However, appellant's counsel did not object to the court conducting a proceeding where she found that appellant was "a violent offender of special concern." Any error was therefore unpreserved.

We do not consider whether we can address the error as fundamental because appellate counsel has not raised the issue. *See Wheeler v. State*, 87 So. 3d 5, 6 (Fla. 5th DCA 2012); *Sampson v. State*, 903 So. 2d 1055, 1059 (Fla. 2d DCA 2005) (Altenbernd, J., concurring); *Williams v. State*, 845 So. 2d 987, 989 (Fla. 1st DCA 2003).

CIKLIN, C.J., GROSS and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.