

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2009

THOMAS C. GEFTOS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-4874

[July 8, 2009]

PER CURIAM.

In this *Anders*¹ appeal, we affirm the conviction and sentence. Our review of the record, however, indicates a possible sentencing error.

The defendant below pled no contest to two offenses: strong arm robbery and aggravated fleeing or eluding at high speed. He entered into a negotiated plea of fifteen years and a day as a habitual felony offender on both offenses and fifteen years mandatory minimum as a prison releasee reoffender (PRR) on the second offense. The court accepted the plea, adjudicated him guilty and sentenced him in accordance with the plea agreement.

The defendant argues that his PRR sentence is illegal because the PRR statute does not make aggravated fleeing and eluding a predicate offense for such enhanced punishment. By the PRR statute's clear text, aggravated fleeing and eluding is not designated as a predicate crime. § 775.082(9)(a), Fla. Stat. (2008). The State argues that when the fleeing/eluding is *aggravated*, thus resulting in violence, the predicate is satisfied. We reject this argument because violence must be a "necessary element of the felony." *Paul v. State*, 958 So. 2d 1135, 1137 (Fla. 4th DCA 2007).

The defendant, though, did not preserve this issue for appeal. We recognize that "a defendant cannot assent to an illegal sentence." *Gregory v. State*, 997 So. 2d 1287, 1288 (Fla. 3d DCA 2009). We further

¹ *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

acknowledge that “a defendant’s right to challenge an illegal sentence is not waived by the fact that the sentence was the result of a negotiated plea.” *Torbert v. State*, 832 So. 2d 203, 205 (Fla. 4th DCA 2002). However, unpreserved sentencing errors cannot be corrected in an *Anders* case. *Colon v. State*, 869 So. 2d 1290 (Fla. 4th DCA 2004). Accordingly, our affirmance is without prejudice to the defendant filing an appropriate post-conviction motion raising any such unpreserved sentencing issues. *Id.*

Affirmed.

FARMER, HAZOURI and GERBER, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner, Judge; L.T. Case No. 06-2925CF10A.

Carey Haughwout, Public Defender, and John M. Conway, Assistant Public Defender, West Palm Beach, for appellant, and Thomas C. Geftos, Punta Gorda, for himself.

Bill McCollum, Attorney General, Tallahassee, and Don M. Rogers and Thomas A. Palmer, Assistant Attorneys General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.