

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2009*

**NICHOLAS DIMONDA,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-164

[December 23, 2009]

PER CURIAM.

Nicholas Dimonda appeals the twenty-five year sentence imposed following the revocation of his probation, claiming the trial court misconceived the law in declining to impose a downward departure sentence. The trial judge's comments during the sentence hearing showed that he was aware of his authority to depart but simply exercised his discretion in declining to do so. Accordingly, we dismiss the appeal as we are without jurisdiction to consider a challenge that the trial court abused its discretion in declining to enter a downward departure sentence. *Hochhauser v. State*, 785 So. 2d 1239 (Fla. 4th DCA 2001); *see also Marshall v. State*, 978 So. 2d 279 (Fla. 4th DCA 2008).

*Dismissed.*

WARNER, FARMER and LEVINE, JJ., concur.

\* \* \*

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Andrew L. Siegel, Judge; L.T. Case No. 96-23351 CF10A.

Dan Hallenberg of The Law Office of Dan Hallenberg, P.A., Fort Lauderdale, for appellant.

Bill McCollum, Attorney General, Tallahassee, and James J. Carney, Senior Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***