

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

STATE OF FLORIDA,
Appellant,

v.

MATTHEW T. BOES,
Appellee.

No. 4D09-4694

[January 26, 2011]

PER CURIAM.

The state appeals a sentence on the ground that the court erred in entering a downward departure where the evidence did not support it. We affirm. The state did not object to the trial court's downward departure on the ground that the trial court's ruling was not supported by competent substantial evidence. "For an issue to be preserved for appeal, it must be presented to the lower court, and the specific legal argument or ground to be argued on appeal must be part of that presentation." *Doorbal v. State*, 983 So. 2d 464, 492 (Fla. 2008). The state's arguments in this appeal concerning the sufficiency of the evidence are being raised for the first time on appeal and therefore were not preserved for appellate review. *See State v. Clark*, 770 So. 2d 237 (Fla. 4th DCA 2000) (holding that the state failed to preserve the issue of whether the specific reasons given for imposition of downward departure sentence were invalid where at sentencing the state did not object on the same grounds argued on appeal).

Because the issue has not been properly preserved, we affirm.

WARNER, POLEN and STEVENSON, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John J. Hoy, Judge; L.T. Case Nos. 2008CF000456AXX and 2008CF001326AXX.

Pamela Jo Bondi, Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for appellee.

Carey Haughwout, Public Defender, and Emily Ross-Booker, Assistant Public Defender, West Palm Beach, for appellant.

Not final until disposition of timely filed motion for rehearing.