

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

|                    |   |                    |
|--------------------|---|--------------------|
| DUANE R. KIRKLAND, | ) |                    |
|                    | ) |                    |
| Appellant,         | ) |                    |
|                    | ) |                    |
| v.                 | ) | Case No. 2D01-1692 |
|                    | ) |                    |
| STATE OF FLORIDA,  | ) |                    |
|                    | ) |                    |
| Appellee.          | ) |                    |
| _____              | ) |                    |

Opinion filed November 8, 2002.

Appeal from the Circuit Court  
for Charlotte County;  
Donald E. Pellecchia, Judge.

Leonard M. Johnson, Punta Gorda,  
for Appellant.

Richard E. Doran, Attorney General,  
Tallahassee, and Ronald Napolitano,  
Assistant Attorney General, Tampa,  
for Appellee.

PER CURIAM.

Duane Kirkland contends that on resentencing the trial court should have sentenced him at the bottom of the sentencing guidelines range in accordance with a plea agreement he entered into at his original sentencing hearing. Kirkland, however, failed to preserve this issue for review on direct appeal because he did not move to

withdraw his plea. See Meriweather v. State, 793 So. 2d 986 (Fla. 2d DCA 2001). We therefore affirm Kirkland's sentence without prejudice to any right he may have to file a motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. See Coogle v. State, 811 So. 2d 782 (Fla. 2d DCA 2002).

Affirmed.

BLUE, C.J., and DAVIS and KELLY, JJ., Concur.