

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

May 18, 2005

ROGER DALE SUMMERLIN,)	
)	
Appellant,)	
)	
v.)	Case No. 2D03-3874
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

BY ORDER OF THE COURT:

On its own motion for rehearing, the court sua sponte grants rehearing. The prior opinion dated April 20, 2005, is withdrawn, and the attached opinion is issued in its place. No further motions for rehearing will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ROGER DALE SUMMERLIN,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D03-3874

Opinion filed May 18, 2005.

Appeal from the Circuit Court for Polk
County; James A. Yancey, Judge, and
Steven L. Selph, Acting Circuit Judge.

James Marion Moorman, Public Defender,
and Kevin Briggs, Assistant Public
Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Tiffany Gatesh Fearing,
Assistant Attorney General, Tampa, for
Appellee.

ALTENBERND, Chief Judge.

Roger Dale Summerlin appeals sentences imposed after he admitted
violating his probation in two separate cases. Although one circuit court judge initially

accepted Mr. Summerlin's plea of admission to the violation of probation, a successor judge imposed the sentences based upon the violation.

Counsel for Mr. Summerlin initially filed a brief under the guidelines established in Anders v. California, 386 U.S. 738 (1967). This court issued an order striking the brief and requiring counsel to file either a merits brief or a motion to correct sentencing error regarding whether the sentences were erroneously imposed by a judge other than the judge who accepted Mr. Summerlin's plea of admission without compliance with Florida Rule of Criminal Procedure 3.700(c)(1). Counsel chose to file a merits brief addressing this issue. The State has responded that the issue is not preserved for appeal. We agree.

A claim that a defendant should have been sentenced by the judge who accepted the plea must be preserved to be cognizable on appeal. See Bell v. State, 895 So. 2d 1290 (Fla. 5th DCA 2005). At the sentencing hearing, Mr. Summerlin's counsel did not object to the successor judge imposing the sentences. This issue might have been preserved by the filing of a motion to correct sentencing error. See Snyder v. State, 870 So. 2d 140 (Fla. 2d DCA 2004). Although Mr. Summerlin's trial counsel filed a motion to reduce sentence with the trial court, citing Florida Rule of Criminal Procedure 3.800(c), that motion did not allege a sentencing error and no motion raising this issue was filed pursuant to Florida Rule of Criminal Procedure 3.800(b). We therefore affirm the sentences without prejudice to Mr. Summerlin seeking

postconviction relief or filing a petition alleging ineffective assistance of appellate counsel on this basis. See, e.g., Hakkenberg v. State, 889 So. 2d 935 (Fla. 2d DCA 2004).

KELLY and LaROSE, JJ., Concur.