

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

ADELL BARNES, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 )  
 \_\_\_\_\_ )

Case No. 2D05-393

Opinion filed May 12, 2006.

Appeal from the Circuit Court  
for Pinellas County;  
Richard A. Luce, Judge.

Cheryl Hoover of Law Offices of  
Cheryl Hoover, P.A., Clearwater,  
for Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Richard M. Fishkin,  
Assistant Attorney General, Tampa,  
for Appellee.

KELLY, Judge.

Adell Barnes appeals from his judgment and five-year sentence following  
the entry of an open guilty plea to sale of marijuana, misdemeanor possession of

marijuana, and felony possession of marijuana. He argues that his plea was not knowing and voluntary because his attorney never told him that he could receive up to five years in prison. He points out that his scoresheet recommended a nonstate prison sanction. In addition, his change of plea form does not state the maximum penalty for the offenses, nor did the trial court inform him of the maximum possible sentence during the plea colloquy. The record supports Barnes' claim. In fact, a review of defense counsel's arguments at the hearing reveals that she was mistaken as to what Barnes' maximum sentence might actually be.

However, because Barnes has not moved to withdraw his plea, the issues he raises on appeal are not properly before this court. See Acord v. State, 841 So. 2d 587 590 (Fla. 2d DCA 2003). Also, as the State points out, claims of ineffective assistance of counsel generally must be raised in a postconviction motion. See Hillenbrand v. State, 790 So. 2d 1153 (Fla. 2d DCA 2001).

Accordingly, we affirm without prejudice to Barnes' right to seek postconviction relief in the trial court.

NORTHCUTT, J., and GALLEN, THOMAS M., ASSOCIATE SENIOR JUDGE, Concur.