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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

TIMOTHY McELRATH,

Appellant,

٧.

STATE OF FLORIDA,

Appellee.

Case No. 2D08-1492

Opinion filed July 1, 2009.

Appeal from the Circuit Court for Polk County; J. Michael Hunter, Judge.

James Marion Moorman, Public Defender, and Kimberly Nolen Hopkins, Special Assistant Public Defender, Bartow, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and Timothy A. Freeland, Assistant Attorney General, Tampa, for Appellee.

DAVIS, Judge.

Timothy McElrath challenges his convictions and sentences for first-

degree murder, attempted voluntary manslaughter, and armed robbery. We affirm his

convictions without comment. However, we write to note that although McElrath

correctly points out, and the State concedes, that the written judgment and sentence fail to accurately reflect the court's oral pronouncement, McElrath has not properly preserved this issue via a Florida Rule of Criminal Procedure 3.800(b) motion. <u>See Jackson v. State</u>, 983 So. 2d 562, 572 (Fla. 2008) (noting that sentencing errors that must be preserved by a rule 3.800(b) motion include claims that a written order deviates from the court's oral pronouncement). Accordingly, we must also affirm McElrath's sentences, but we do so without prejudice to any right McElrath might have to raise the issue in a rule 3.800(a) or 3.850 motion.

Affirmed.

SILBERMAN and CRENSHAW, JJ., Concur.