

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1029
Lower Tribunal Nos. 13-24799 and 13-24792

Gerrod Smith,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Andrea R. Wolfson, Judge.

Eugene F. Zenobi, Criminal Conflict and Civil Regional Counsel, Third Region, and Kristen Kawass, Assistant Regional Counsel, for appellant.

Ashley Moody, Attorney General, and G. Raemy Charest-Turken, Assistant Attorney General, for appellee.

Before EMAS, C.J., and SCALES and LINDSEY, JJ.

PER CURIAM.

Gerrod Smith appeals from an order revoking his probation and imposing sentence, contending that 1) the written order of revocation fails to include certain violations that were orally pronounced by the trial court at the conclusion of the violation of probation hearing; 2) the written order of revocation includes certain violations that were not orally pronounced by the trial court at the conclusion of the hearing; and 3) the court failed to reduce to writing, as mandated by the violent felony offender of special concern statute (section 948.06(8)(e)1., Florida Statutes (2019)) its orally pronounced finding that Smith poses a danger to the community.¹

First, we affirm the trial court's revocation of probation, finding that the evidence supported the trial court's oral pronouncements of those violations which the State established at the hearing.

Second, and as the State properly concedes, the trial court failed to make a written finding consistent with its oral pronouncement and as mandated by section 948.06(8)(e)1., that Smith poses a danger to the community. As this Court has recently held, "the written findings requirement of section 948.06(8)(e) is mandatory, not discretionary." McCray v. State, 283 So. 3d 406, 408 (Fla. 3d DCA 2019). We therefore remand for entry of a written finding consistent with the court's oral pronouncement and as required by statute.

¹ Smith concedes he qualified as a violent felony offender of special concern pursuant to section 940.06(8)(b), Florida Statutes (2019).

Finally, the State also concedes that the trial court's revocation order does not accurately reflect the oral pronouncements made by the trial court at the conclusion of the probation violation hearing. However, while conceding this conflict between the oral pronouncement and the written order, the State contends that Smith failed to preserve the issue for appeal. We agree, and hold that Smith was required to preserve the issue either by contemporaneous objection to the written revocation order, or by filing a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b). See Thomas v. State, 763 So. 2d 316 (Fla. 2000) (approving Second District opinion which held that a conflict between an oral finding that defendant violated one condition of probation and the written revocation order that he had violated an additional seven conditions of probation was not fundamental error correctable on appeal absent preservation, as the asserted error had "no quantitative effect on the sentence," and further noting that a defendant or the State may seek to correct a scrivener's error by filing a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b)). See also Qureshi v. State, 152 So. 3d 680 (Fla. 4th DCA 2014); Parris v. State, 974 So. 2d 415 (Fla. 5th DCA 2007); Jelks v. State, 770 So. 2d 183 (Fla. 2d DCA 2000).

We thus affirm the revocation and sentence, but remand for entry of a written finding pursuant to section 948.06(8)(e)1., that Smith poses a danger to the community. Our affirmance is without prejudice to the filing of a timely and

authorized postconviction motion seeking to correct any conflict between the trial court's oral pronouncement and written revocation order regarding those conditions of probation found by the trial court to have been violated by the defendant.