

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Nugent v. State of Florida

No. 2D2024-0613 (Fla. 2d DCA May 7, 2025) · No. 2D2024-0613 · Decided May 7, 2025

SUMMARY

The Florida Second District Court of Appeal affirmed Aaron Nugent’s judgment and sentence for misdemeanor violation of a license restriction following a negotiated no contest plea. The court held that Nugent could not directly appeal the denial of his motions to dismiss because he did not expressly reserve the right to appeal those issues in the plea hearing or written plea agreement. The affirmance was without prejudice to any potential motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Sleet, Chief Judge; Silberman, J.; LaRose, J.
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	May 7, 2025
DOCKET	2D2024-0613
DISPOSITION	affirmed
PROCEDURAL POSTURE	Aaron Nugent appealed his judgment and sentence for misdemeanor violation of license restriction after entering a negotiated no contest plea and receiving a fifteen-day county-jail sentence to be served as electronic monitoring. He challenged the county court's denial of his motions to dismiss.
PRECEDENTIAL VALUE	published
PARTIES	Aaron Nugent v. State of Florida

TOPICS

- appellate procedure
- preservation of error
- plea bargaining
- criminal procedure
- post-conviction relief

PRACTICE AREAS

- Florida criminal appellate procedure
- criminal procedure
- plea agreements
- post-conviction relief

QUESTIONS PRESENTED

1. Whether a defendant who enters a negotiated no contest plea may obtain direct appellate review of the denial of motions to dismiss when the defendant did not expressly reserve the right to appeal the dispositive issue in the plea hearing or written plea agreement.
2. Whether counsel's request that the trial court find the issue dispositive satisfies the statutory and rule-based express-reservation requirement.

HOLDINGS

1. A defendant who pleads no contest has no right to a direct appeal of a legally dispositive issue unless the defendant expressly reserves the right to appeal that issue with particularity.
2. The affirmance is without prejudice to any right Nugent may have to file a Florida Rule of Criminal Procedure 3.850 motion.

KEY QUOTATIONS

“A defendant who pleads . . . nolo contendere with no express reservation of the right to appeal a legally dispositive issue, shall have no right to a direct appeal.” (at 2)

“A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.” (at 2)

FACTUAL BACKGROUND

Nugent was charged with misdemeanor violation of a license restriction. He entered a negotiated no contest plea, and the county court imposed the agreed sentence of fifteen days in county jail to be served as electronic monitoring. Although defense counsel sought a ruling that the denied motions were dispositive, neither Nugent's plea hearing nor written plea agreement expressly reserved his right to appeal their denial.

PROCEDURAL HISTORY

The Pinellas County Court denied Nugent's motions to dismiss, accepted his negotiated no contest plea, and sentenced him pursuant to the agreement. The Second District Court of Appeal affirmed because Nugent did not expressly reserve his right to appeal the denial of the motions at the plea hearing or in the written plea agreement, while preserving any right to seek relief under Florida Rule of Criminal Procedure 3.850.

DISPOSITION

affirmed

CASES CITED

- Pamphile v. State, 65 So. 3d 107, 108 (Fla. 4th DCA 2011)
- Hawk v. State, 848 So. 2d 475, 477-78 (Fla. 5th DCA 2003)
- Lewis v. State, 262 So. 3d 859, 861 (Fla. 1st DCA 2018)

- Clough v. State, 139 So. 3d 312, *1 (Fla. 4th DCA 2014) (table decision)
- Leonard v. State, 760 So. 2d 114, 119 (Fla. 2000)
- Howard v. State, 824 So. 2d 1015, 1016 (Fla. 5th DCA 2002)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT AARON NUGENT, Appellant, v. STATE OF FLORIDA, Appellee. No. 2D2024-0613 May 7, 2025 Appeal from the County Court for Pinellas County; Theodora C. Komninos, Judge. Jeremy Clark and Tyler Vaughn of Clark|Hartpence Law, St. Petersburg, for Appellant. James Uthmeier, Attorney General, Tallahassee, and Allison C. Heim, Assistant Attorney General, Tampa, for Appellee.

SLEET, Chief Judge. Aaron Nugent appeals from his judgment and sentence for misdemeanor violation of license restriction. He entered a negotiated no contest plea to the charge, and the county court sentenced him pursuant to agreement to fifteen days' county jail to be served as electronic monitoring.

On appeal, he argues that the trial court erred in denying his motions to dismiss. However, because Nugent failed at his plea hearing and in the written plea agreement to expressly reserve his right to appellate review of the denial of these motions, we affirm. See § 924.06(3), Fla. Stat. (2024) ("A defendant who pleads... nolo contendere with no express reservation of the right to appeal a legally dispositive issue, shall have no right to a direct appeal." (emphasis added)); Fla. R. App.

P. 9.140(b)(2)(A)(i) ("A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved." (emphasis added)).

Although defense counsel sought a ruling of dispositiveness, the case law indicates that such is not enough to satisfy the reservation requirement. See Pamphile v. State, 65 So. 3d 107, 108 (Fla. 4th DCA 2011) ("[W]ithout both an express reservation of the right to appeal and a finding that the issue is dispositive,... a defendant who pleads guilty or nolo contendere has no right to a direct appeal."); Hawk v. State, 848 So.

2d 475, 477-78 (Fla. 5th DCA 2003) (concluding that "the plea form... not contain[ing] any reservation of Hawk's right to appeal and his oral plea [being] entered without such a reservation" was "insurmountable" and precluded relief despite defense counsel having asked the trial court to make a finding that the denial of his motion to suppress was dispositive); see also Lewis v. State, 262 So.

3d 859, 861 (Fla. 1st DCA 2018) (concluding the statute and rule were not satisfied where although "[t]he parties stipulated that Appellant's motion to suppress was dispositive[,],... nothing

in the record reflects Appellant's express reservation of his right to appeal the dispositive issue"); *Clough v. State*, 139 So. 3d 312, *1 (Fla. 4th DCA 2014) (table decision) (affirming where "the written plea agreement signed by appellant, defense counsel, and 2 the prosecutor stipulated that the denial of his motion to suppress was dispositive" and "[t]he prosecutor... orally agreed to this stipulation during the plea colloquy" but "appellant did not expressly reserve his right to appeal the denial of the motion, either in the written plea agreement or during his oral plea colloquy").

Accordingly, we must affirm. See *Leonard v. State*, 760 So. 2d 114, 119 (Fla. 2000). However, we do so without prejudice to any right Nugent may have to file a Florida Rule of Criminal Procedure 3.850 motion. See *Pamphile*, 65 So. 3d at 109 (citing *Howard v. State*, 824 So. 2d 1015, 1016 (Fla. 5th DCA 2002), for the proposition that "filing a rule 3.850 motion alleging ineffective assistance of counsel is the appropriate remedy for a defendant whose attorney advised him or her to plead... without reserving the right to appeal").

Affirmed. SILBERMAN and LaROSE, JJ., Concur. Opinion subject to revision prior to official publication. 3