

FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Sanderson v. State of Florida

Sanderson · No. Nos. 1D2024-1311, 1D2024-1312, 1D2024-1313 (consolidated) · Decided April 1, 2026

SUMMARY

The First District Court of Appeal affirmed Joseph Sanderson’s judgment and sentence, holding that Erlinger v. United States does not require a jury to determine whether a defendant qualifies as a violent felony offender of special concern based on prior convictions. The court also held that the trial court’s danger-to-the-community finding under Florida Statutes section 948.06 did not violate the Sixth Amendment in this case.

CASE DETAILS

COURT	First District Court of Appeal of Florida
WRITING FOR THE COURT	Bilbrey, J.; Kelsey, J.; Nordby, J.
JURISDICTION	First District Court of Appeal of Florida
DECIDED	April 1, 2026
DOCKET	Nos. 1D2024-1311, 1D2024-1312, 1D2024-1313 (consolidated)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from judgments and sentences entered by the Circuit Court for Santa Rosa County after probation violations and related criminal charges; the cases were consolidated for disposition.
STANDARD OF REVIEW	Not expressly stated.
PRECEDENTIAL VALUE	published
PARTIES	Joseph Sanderson v. State of Florida

TOPICS

- sentencing
- sixth amendment
- criminal procedure
- appellate procedure
- harmless error

PRACTICE AREAS

- criminal procedure
- constitutional law
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Sixth Amendment, as interpreted in *Erlinger v. United States*, requires a jury rather than a trial judge to determine whether a defendant qualifies as a violent felony offender of special concern based on prior convictions and the nature of the prior offenses.
2. Whether a trial court may make the statutory dangerousness finding required for a violent felony offender of special concern in probation-revocation proceedings and whether that finding unlawfully increases the defendant's sentence.
3. Whether any error in the trial court's VFOSC-related findings was harmless.

HOLDINGS

1. The Sixth Amendment does not require a jury to determine VFOSC status when the determination rests on the fact of prior convictions and the then-existing elements or nature of the prior offenses. A trial court may determine those facts from judicial records, plea agreements, and plea colloquies.
2. The dangerousness finding required by section 948.06(8)(e)1. did not unlawfully increase Sanderson's sentence because the sentence increase resulted from the VFOSC designation, which was based on prior convictions and was validly determined by the court. *Brown v. State* therefore did not apply.
3. Any error in the trial court's VFOSC-related findings was harmless beyond a reasonable doubt.

KEY QUOTATIONS

“The Supreme Court in Erlinger expressly recognized that a court can “undertake the job of finding the fact of a prior conviction—and that job alone.”” (at 2)

“Any increase in sentence is from the VFOSC finding, which was stipulated-to here, but can also be based on a trial court’s determining a defendant’s past criminal convictions, without violating the Sixth Amendment.” (at 3)

FACTUAL BACKGROUND

Sanderson was on sex-offender probation after pleading guilty to fifteen counts of possessing child sexual abuse material and several attempted sexual offenses involving a victim under age twelve. He violated probation by contacting a minor, failing to register a cell phone as a sex offender, and accessing the internet. The trial court found that he qualified as a violent felony offender of special concern and posed a danger to the community, then imposed a twenty-five-year sentence on two sexual-battery counts and concurrent 234-month sentences on the additional counts.

PROCEDURAL HISTORY

Sanderson pleaded guilty to multiple sexual offenses and was placed on sex-offender probation. He later violated probation by having contact with a minor, failing to register a cell phone, and accessing the internet. The trial court designated him a violent felony offender of special concern, found him dangerous to the community, revoked probation, and imposed prison sentences. Sanderson appealed, arguing that the Sixth Amendment and *Erlinger* required a jury to make the VFOSC and dangerousness findings.

DISPOSITION

affirmed

CASES CITED

- Erlinger v. United States, 602 U.S. 821 (2024)
- Gilbert v. State, 397 So. 3d 57, 59 (Fla. 4th DCA 2024)
- Maye v. State, 368 So. 3d 531, 532 (Fla. 6th DCA 2023)
- Hugger v. State, 51 Fla. L. Weekly D169, 2026 WL 215872, at *1 (Fla. 1st DCA Jan. 28, 2026)
- Jett v. State, 426 So. 3d 596, 597 (Fla. 1st DCA 2025)
- Flowers v. State, 424 So. 3d 1062, 1063 (Fla. 1st DCA 2025)
- Hollingsworth v. State, 293 So. 3d 1049, 1052-53 (Fla. 4th DCA 2020)
- Souza v. State, 229 So. 3d 387, 389 (Fla. 4th DCA 2017)
- Brown v. State, 260 So. 3d 147, 149-51 (Fla. 2018)

OPINION

PER CURIAM.

FIRST DISTRICT COURT OF APPEAL STATE OF FLORIDA
_____, Nos. 1D2024-1311 1D2024-1312 1D2024-1313
(Consolidated for disposition) * _____ JOSEPH SANDERSON,
Appellant, v. STATE OF FLORIDA, Appellee. _____ On appeal
from the Circuit Court for Santa Rosa County. Clifton Alan Drake, Judge. April 1, 2026 PER
CURIAM.

This case joins many others testing the application of Erlinger v. United States, 602 U.S. 821 (2024). Appellant argues that Erlinger bars a trial court from finding that a defendant is a violent felony offender of special concern (VFOSC) or that a VFOSC is a danger to the community; and that instead, a jury *Santa Rosa County case number 2021-CF-806 generated appeal number 1D2024-1311; case number 2022-CF-117 became 1D2024-1312; and case number 2023-CF-970 became 1D2024- 1313. must make such findings.

We reject the argument and affirm Appellant’s judgment and sentence. Appellant was on sex-offender probation after admitting guilt for fifteen counts of possession of child sexual abuse material in case number 2021-CF-80; and two counts of attempted sexual battery plus one count of attempted lewd and lascivious molestation, in case number 2022-CF-117 (victim under age 12).

He does not dispute that these offenses qualified him for VFOSC status. See § 948.06(8)(b)1., Fla. Stat. (2023) (defining VFOSC as a person on felony probation or community control for a qualifying offense). He also does not dispute that he violated his sex-offender probation by having

contact with a minor, failing to register a cell phone as a sex offender, and accessing the internet, addressed in case number 2023-CF-970.

Appellant pleaded straight up to the trial court. The court made express written findings that Appellant qualified as a VFOSC, and found him to be a danger to the community. See § 948.06(8)(c)4.–5., 8., Fla. Stat. (defining “qualifying offense” as including sexual battery, attempted sexual battery, actual or attempted lewd or lascivious battery, and actual or attempted sexual performance by a child).

The court sentenced him to twenty- five years in prison, covering two sexual battery counts; and 234 months prison for the numerous additional counts, concurrent with each other and concurrent with the battery sentence.

The fact that Appellant’s criminal punishment scoresheet was increased due to his qualifying as a VFOSC does not violate his Sixth Amendment right to a jury trial. A judge is authorized to use “judicial records, plea agreements, and colloquies between a judge and the defendant... for the ‘limited function’ of determining the fact of a prior conviction and the then-existing elements of that offense.” *Erlinger*, 602 U.S. at 839; see also § 90.202(6), Fla. Stat. (authorizing courts to take judicial notice of records of any state or federal court); *Gilbert v. State*, 397 So.

3d 57, 59 (Fla. 4th DCA 2024) (recognizing court’s authority to take judicial notice of original sentencing records to establish habitual felony offender status).² The Supreme Court in *Erlinger* expressly recognized that a court can “undertake the job of finding the fact of a prior conviction—and that job alone.” 602 U.S. at 835–38.

Under Florida law, Appellant is a VFOSC if he was on “[f]elony probation... related to the commission of a qualifying offense.” § 948.06(8)(b)1., Fla. Stat. *Erlinger* does not require a jury to find the fact of Appellant’s prior conviction for purposes of the VFOSC designation. See *Maye v. State*, 368 So. 3d 531, 532 (Fla. 6th DCA 2023) (“[T]he date a defendant was released from prison or jail and the nature of the qualifying offense are ministerial in nature and thus do not require jury findings.”), review granted, No. SC2023- 1184, 2024 WL 1796831 (oral argument held February 6, 2025).

Even if there had been any error, it was harmless. See, e.g., *Hugger v. State*, 51 Fla. L. Weekly D169, 2026 WL 215872, at *1 (Fla. 1st DCA January 28, 2026) (holding trial court did not err in relying on certified copy of the Department of Corrections Crime and Time Report to adjudicate appellant a prison releasee reoffender); *Jett v. State*, 426 So. 3d 596, 597 (Fla.

1st DCA 2025) (“Based on the uncontroverted evidence, any error in not submitting the PRR determination to a jury was harmless beyond a reasonable doubt.”); *Flowers v. State*, 424 So. 3d 1062, 1063 (Fla. 1st DCA 2025) (same). When a VFOSC probationer is alleged to have violated probation “other than a failure to pay costs, fines, or restitution,” the court must “[m]ake written

findings as to whether or not the violent felony offender of special concern poses a danger to the community.” § 948.06(8)(e)1., Fla. Stat. The trial court must consider various factors in making that dangerousness determination.

See § 948.06(8)(e)1.a.–e., Fla. Stat. Here, the trial court found Appellant to be a danger to the community, and entered a written order as the statute requires. In two of Appellant’s three consolidated cases, the judicial “danger to the community” fact-finding occurred in probation revocation proceedings, in which there appears to be no Sixth Amendment concern regardless of the impact on Appellant’s sentence.

See *Hollingsworth v. State*, 293 So. 3d 1049, 1052–53 (Fla. 4th DCA 2020); *Souza v. State*, 229 So. 3d 387, 389 (Fla. 4th DCA 2017). However, case number 2023-CF-970 involved new criminal charges. If the trial court, rather than a jury, had found Appellant a “danger to the community” and increased Appellant’s sentence, it would violate the Sixth Amendment right to a jury trial.

See *Brown v. State*, 260 So. 3d 147, 149 (Fla. 2018). In *Brown*, the trial court was required to determine, under section 775.082(10) of the Florida Statutes, whether sentencing a defendant to a “nonstate prison sanction” rather than a prison sentence “could present a danger to the public.” The court made the public-danger determination without a jury. *Id.* at 150.

The supreme court held that this violated the defendant’s Sixth- Amendment right to a jury trial. *Id.* at 150–51. Here, in contrast, the community-danger finding under section 948.06(8)(e)1., Florida Statutes, only impacts whether a VFOSC probationer can be restored to probation, or must have probation revoked and be sentenced up to the statutory maximum prison sentence, or longer if permitted by law.

See § 948.06(8)(e)2.a.–b., Fla. Stat. Any increase in sentence is from the VFOSC finding, which was stipulated-to here, but can also be based on a trial court’s determining a defendant’s past criminal convictions, without violating the Sixth Amendment.

As a result, the holding in *Brown* does not apply to the sentencing of a VFOSC defendant. See *Hollingsworth*, 293 So. 3d at 1052–53. AFFIRMED. BILBREY, KELSEY, and NORDBY, JJ., concur. _____ Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. _____ Robert David Malove and Hani Adel Demetrious of The Law Office of Robert David Malove, P.A., Fort Lauderdale, for Appellant.

James Uthmeier, Attorney General, and Darcy Townsend, Assistant Attorney General, Tallahassee, for Appellee. 4