

# FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

## Terell Devon Ross v. State of Florida

Ross · No. 5D2024-2129 · Decided March 14, 2025

### SUMMARY

The Fifth District Court of Appeal of Florida affirmed Terell Devon Ross’s convictions and sentences following his negotiated guilty plea in an Anders appeal. The court remanded for ministerial corrections because the judgment incorrectly classified a heroin-trafficking conviction as a life felony and improperly assessed fines and a surcharge that had been waived. Ross was not required to be present for the corrections.

### CASE DETAILS

|                       |                                                                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Fifth District Court of Appeal of Florida                                                                                                                                                        |
| WRITING FOR THE COURT | Per Curiam; Edwards, C.J.; Lambert, J.; Kilbane, J.                                                                                                                                              |
| JURISDICTION          | Fifth District Court of Appeal of Florida                                                                                                                                                        |
| DECIDED               | March 14, 2025                                                                                                                                                                                   |
| DOCKET                | 5D2024-2129                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Anders appeal from a judgment and sentences entered after Appellant pleaded guilty pursuant to a negotiated plea agreement to all charged offenses. Appellant did not move to withdraw the plea. |
| STANDARD OF REVIEW    | Anders review of the record for arguable reversible error following a guilty plea; the opinion also reviewed the sentencing documents for ministerial errors.                                    |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                |
| PARTIES               | Terell Devon Ross v. State of Florida                                                                                                                                                            |

### TOPICS

- criminal procedure
- appellate procedure
- sentencing
- statutory interpretation

### PRACTICE AREAS

- criminal procedure
- appellate practice
- sentencing

## QUESTIONS PRESENTED

1. Whether the convictions and sentences should be affirmed following Anders review of an appeal from a negotiated guilty plea where the defendant did not move to withdraw the plea.
2. Whether the sentencing judgment must be corrected because it incorrectly classified the count-nine trafficking conviction as a life felony.
3. Whether the cost judgment must be corrected to remove fines and a five-percent surcharge that were waived by the State, were not orally announced at sentencing, and were not part of the plea agreement.

## HOLDINGS

1. The convictions and sentences are affirmed where the record revealed no reversible issue warranting relief and the appellant did not move to withdraw the guilty plea.
2. The trial court must correct the judgment because trafficking in heroin involving twenty-eight grams or more under section 893.135(1)(c)1.c., Florida Statutes (2023), is a first-degree felony, not a life felony.
3. The cost judgment must be amended to remove the fine and five-percent surcharge because the State waived mandatory fines as part of the plea bargain, no fine was orally announced at sentencing, and no fine was included in the plea agreement.

## KEY QUOTATIONS

*“Accordingly, we affirm Appellant’s convictions and sentences, but remand for the trial court to enter amended sentencing documents consistent with this opinion.”*

*“Appellant need not be present for these ministerial corrections.”*

## FACTUAL BACKGROUND

Ross pleaded guilty pursuant to a negotiated plea agreement to all charged offenses. The written judgment incorrectly characterized his conviction on count nine for trafficking in heroin of twenty-eight grams or more as a life felony, although the governing statute classifies it as a first-degree felony. The cost judgment also assessed a fine and a five-percent surcharge even though the State had waived mandatory fines as part of the plea agreement and the trial court had not orally announced or included any fine in the agreement.

## PROCEDURAL HISTORY

The Circuit Court for Volusia County entered judgment and imposed sentences following Appellant's negotiated guilty plea. On Anders review, the Fifth District Court of Appeal affirmed the convictions and sentences but remanded for correction of two ministerial errors in the sentencing documents.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The trial court must enter amended sentencing documents correcting the classification of count nine to a first-degree felony and enter an amended cost judgment removing the fine and five-percent surcharge. Ross need not be present for these ministerial corrections.

#### CASES CITED

- Anders v. California, 386 U.S. 738 (1967)
- State v. Dortch, 317 So. 3d 1074, 1075 (Fla. 2021)

#### OPINION

Terrell Devon Ross v. State of Florida

PER CURIAM.

FIFTH DISTRICT COURT OF APPEAL

STATE OF FLORIDA

\_\_\_\_\_ Case No. 5D2024-2129 LT Case No. 2023-101248-CFDB

\_\_\_\_\_ TERELL DEVON ROSS,

Appellant, v.

STATE OF FLORIDA,

Appellee. \_\_\_\_\_ On appeal from the Circuit Court for Volusia County. Dawn Nichols, Judge. Matthew J. Metz, Public Defender, and Ali L. Hansen, Assistant Public Defender, Daytona Beach, for Appellant. James Uthmeier, Attorney General, Tallahassee, and Bonnie Jean Parrish, Assistant Attorney General, Daytona Beach, for Appellee. March 14, 2025 PER CURIAM. In this Anders 1 appeal, we affirm the judgment and sentences imposed upon Appellant by the trial court following Appellant's negotiated plea of guilty to all charged offenses, noting that Appellant did not move to withdraw his plea. See State v. Dortch, 317 So. 3d 1074, 1075 (Fla. 2021).

1 Anders v. California, 386 U.S. 738 (1967). However, our review of the record reveals two ministerial errors that we direct the trial court to correct on remand. First, the judgment shows Appellant's conviction on count nine for trafficking in heroin, twenty-eight grams or more, as a life felony. Section 893.135(1)(c)1.c., Florida Statutes (2023), provides that this is a first-degree felony. Second, the judgment for charges, costs, and fees shows the assessment of a fine, plus a 5% surcharge on the fine. As part of the plea bargain, the State had waived the assessment of any mandatory fines against Appellant in this case, which it was permitted to do. See § 893.135(4), Fla. Stat. No fines were orally announced by the court during sentencing, nor was the assessment of any fine part of the plea agreement. The trial court is directed to enter an amended cost judgment that does not include an assessment of fines or surcharges. Accordingly, we affirm Appellant's convictions and sentences, but remand for the trial court to enter amended sentencing documents consistent with this opinion. Appellant need not be present for these ministerial corrections. AFFIRMED; REMANDED with directions. EDWARDS, C.J., and LAMBERT, J.,

concur. KILBANE, J., concurs in part and dissents in part, with opinion.  
\_\_\_\_\_. Not final until disposition of any timely and authorized  
motion under Fla. R. App. P. 9.330 or 9.331. \_\_\_\_\_ 2 2345ÿ789ÿ  
ÿ 9ÿ2345ÿ789ÿ 0 2 ÿ ÿ ÿ 7 ÿ 9 ÿ 8  
! "ÿ! ÿ#3 ÿ3 \$ÿ\$!445 ! "ÿ! ÿ#3 9ÿ ÿ  
ÿ3"55ÿ %3 ÿ&5ÿ' 4 ÿ3(!'ÿ %!4ÿ) \$""5 ÿ3 \$ÿ45 5 5 ÿ\* ÿ 5'3 \$ÿ(8ÿ 8  
5 !8 ÿ8(ÿ 8 ÿ ! 5ÿ34ÿ3ÿ(!4 \$5"55 ÿ34ÿ8##845\$ÿ 8ÿ 3ÿ+!(5ÿ(5+8 ,9ÿ ÿ  
-8&5.5 ÿ34ÿ 8ÿ %5ÿ!'#84! !8 ÿ8(ÿ %5ÿ'3 \$3 8,ÿ(! 54ÿ3 \$ÿ  
4 \*45/ 5 ÿ&3!.5ÿ8(ÿ %845ÿ(! 54 ÿ %5ÿ'3)8! ,ÿ%34ÿ 8 ÿ3\$5445\$ÿ  
%8&ÿ %!4ÿ 8 4 ! 5\$ÿ5 8 ÿ+5 ÿ3+8 5ÿ5.54!\*+5ÿ5 8ÿ5\$5443\*+5ÿ! ÿ  
3 ÿ012345ÿ3##53+9ÿÿ633ÿ895:ÿ;<ÿ6=>=3 ÿ0 ÿ?89ÿ0\$ÿ@ @ ÿ@ @ÿA +39ÿ %ÿ 2 ÿ  
0BÿA !4 3 "+5 ÿ 9 ÿ 8 ! "ÿ! ÿ#3 ÿ3 \$ÿ\$!445 ! "ÿ! ÿ  
#3 BÿACDEF ÿ+!'! 5\$ÿ012345ÿ5.!5&ÿ\$854ÿ 8 ÿ! + \$5ÿ 8 5 !8 ÿ8(ÿ  
%3'+544ÿ5 89GÿA ! ! "ÿ6=>=3ÿ;<ÿH>953IJÿ 0ÿ?89ÿ\$ÿ0 ÿ0 K 0ÿ  
A +39ÿ LBBBMÿ533ÿ>N5OÿP1Q=32ÿ6=>=35ÿ;<ÿRQNSO=: ÿ@@ ÿ 9ÿ ##TUÿ  
ÿ  
LÿA %ÿ2!9ÿ @BÿAC ÿ3 8\$3 5ÿ&! %ÿ012345 ÿ&5ÿ%3.5ÿ5.!5&5\$ÿ  
%5ÿ5 !5ÿ5 8\$ÿ! ÿ %!4ÿ 345ÿ3 \$ÿ(8 \$ÿ 8ÿ'5! 8!8 4ÿ!44 54ÿ(8ÿ  
3##53+ ÿ8 %5ÿ %3 ÿ %5ÿ!4Vÿ5 %3 5'5 ÿ!44 5 ÿ&%! %ÿ&5ÿ 8 + \$5ÿ  
(3!+4ÿ%3'+544ÿ5 8ÿ5.!5&9GBMÿP1Q=32ÿ6=>=35ÿ;<ÿWQNN ÿ0 ÿ 9ÿ ##TUÿ  
L ÿL0 ÿAL %ÿ2!9ÿ BÿA3##+,! "ÿ%3'+544ÿ5 8ÿ3 3+,4!4ÿ! ÿ  
012345ÿ3##53+B9ÿ ÿ X%!+5ÿ ÿ \$54 3 \$ÿ %5ÿ'3)8! ,T4ÿ#5(55 5ÿ(8ÿ3ÿ\$!((55 ÿ  
3##83 %ÿ 8ÿ %5ÿ!'#84! !8 ÿ3 \$ÿ&3!..! "ÿ8(ÿ'3 \$3 8,ÿ(! 54ÿ! ÿ %5ÿ &  
! 5 ÿ) \$""5 ÿ+! " !4 ! ÿ#5(55 5ÿ\$854ÿ 8 ÿ5/ 3 5ÿ 8ÿ%3'( +ÿ 5  
89ÿÿ 5 3 45ÿ ÿ 3 ÿ(! \$ÿ 8ÿ3 %8! ,ÿ %3 ÿ#5! 4ÿ4 3ÿ4#8 5ÿ 8  
5 !8 ÿ8(ÿ %3 ÿ&%! %ÿ!4ÿ3+53\$,ÿ 8 5 ÿ ÿ\$!445 ÿ(8'ÿ %3 ÿ  
#8 !8 ÿ8(ÿ %5ÿ8#! !8 9ÿ 0ÿ