

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2025-2865
Lower Tribunal No. 2023-CF-007078

JOHNNY EDWARD SIMON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Polk County.
Gerald P. Hill, II, Judge.

August 28, 2026

PER CURIAM.

Johnny Edward Simon challenges the postconviction court’s summary denial of his motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a)(1). We affirm because Simon’s sentence, imposed following a plea to aggravated assault with a deadly weapon, is legal. *See* Fla. R. Crim. P. 3.800(a)(1) (“A court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief”);

Martinez v. State, 211 So. 3d 989, 991 (Fla. 2017) (“[T]o be subject to correction under rule 3.800(a) a sentence must be ‘one that no judge under the entire body of sentencing laws could possibly impose.’” (quoting *Wright v. State*, 911 So. 2d 81, 83 (Fla. 2005))); § 921.16(1), Fla. Stat. (2024) (“Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.”). Nothing in the summary record suggests that the trial court imposed a sentence that would run concurrently with his sentence in a separate felony case involving drug-related offenses. *See Johnson v. State*, 60 So. 3d 1045, 1050 (Fla. 2011) (“Under rule 3.800(a), the burden is on the petitioner to demonstrate an entitlement to relief on the face of the record.”) (citation modified). We note, though, that Simon’s trial counsel made statements to him before the trial court began its plea colloquy that could have reasonably caused Simon to believe that his sentence would run concurrently to the sentence in his separate felony case. We thus affirm without prejudice for Simon to seek postconviction relief under Florida Rule of Criminal Procedure 3.850 if he can timely do so in good faith.

AFFIRMED.

TRAVER, C.J., and WOZNIAK and MIZE, JJ., concur.

Johnny Edward Simon, Carrabelle, pro se.

James Uthmeier, Attorney General, Tallahassee, and Ceresse Crawford Taylor, Chief Assistant Attorney General, Tampa, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED