

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

Case No. 6D2023-0677
Lower Tribunal No. 20-1375-F

JUSTIN O'NEIL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the Circuit Court for Charlotte County.
Scott H. Cupp, Judge.

January 17, 2025

MIZE, J.

The errors asserted by Appellant relating to the merits of his conviction were not preserved below and, therefore, we review them for fundamental error.¹ *See Noetzel v. State*, 328 So. 3d 933, 945 (Fla. 2021). We find no fundamental error with respect to these asserted errors and affirm with respect to them without further discussion.

¹ This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

Appellant also asserts that the trial court committed fundamental error with respect to his sentence because the trial court entered a written sentence that did not comport with its oral pronouncement. However, Appellant did not file a motion under Florida Rule of Criminal Procedure 3.800(b) either prior to filing this appeal or prior to the filing of his initial brief. A defendant may not raise a sentencing error as fundamental error on appeal if he has not preserved the issue by either filing a motion under rule 3.800(b) or by objecting during the sentencing hearing. *Jackson v. State*, 983 So. 2d 562, 569 (Fla. 2008). Because Appellant did not do so, we affirm his sentence. This opinion is without prejudice to Appellant filing any appropriate motion under Florida Rule of Criminal Procedure 3.800(a).

AFFIRMED.

NARDELLA and WHITE, JJ., concur.

Blair Allen, Public Defender, and Jean M. Henne, Special Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Taylor A. Schell, Assistant Attorney General, Tampa, for Appellee.

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