

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2025-2349

BRITTANY NICHOLE CHINCHAR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
Jennie Kinsey, Judge.

September 30, 2026

LONG, J.

Appellant, Brittany Chinchar, challenges her conviction and sentence for possession of fentanyl and trafficking in methamphetamine. She argues that the trial court erred in denying her motion for judgment of acquittal and that her twenty-five-year prison sentence was the product of judicial vindictiveness. We affirm the denial of acquittal without further discussion, and we write to address the judicial vindictiveness issue.

“[I]mposition of a vindictive sentence is fundamental error that may be raised for the first time on appeal.” *Baxter v. State*, 127 So. 3d 726, 732 (Fla. 1st DCA 2013) (quoting *Mendez v. State*, 28 So. 3d 948, 950 (Fla. 2d DCA 2010)). A vindictive sentence is

one that was “imposed in retaliation for the defendant not pleading guilty and instead exercising his or her right to proceed to trial.” *Id.* at 733 (quoting *Wilson v. State*, 845 So. 2d 142, 156 (Fla. 2003)).

The Florida Supreme Court has laid out four factors that an appellate court should consider in determining whether a presumption that a sentence is vindictive exists: (1) whether the trial court initiated the plea discussions; (2) whether the trial court, through its comments on the record, appears to have departed from its role as an impartial arbiter by urging the defendant to accept a plea or by indicating that the sentence imposed would hinge on whether the defendant accepted a plea; (3) the disparity between the plea offer and the ultimate sentence imposed; and (4) the lack of any record facts that explain the reason for the increased sentence other than that the defendant exercised her right to a trial or hearing. *See Wilson*, 845 So. 2d at 156. Once a presumption of judicial vindictiveness has been established, the burden shifts to the State to produce “affirmative evidence on the record to dispel the presumption.” *Id.*

Here, the record does not establish a presumption of judicial vindictiveness. There is no record evidence that the trial court ever participated in the plea discussions in this case. There is nothing in this record which suggests that the trial court’s sentencing decision was at all related to Chinchar’s decision not to take a plea. Chinchar has, therefore, failed to establish a presumption of vindictiveness.

AFFIRMED.

KELSEY and TREADWELL, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Ross S. Haine, II, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and David Welch, Tallahassee, for Appellee.