

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA

Appellant,

v.

Appeal No. CRC 11-00009 APANO
UCN 522011AP000009XXXXCR

TIMOTHY KELLER

Appellee.

_____ /

Opinion filed _____.

Appeal from a judgment and sentence
entered by the Pinellas County Court,
County Judge Lorraine M. Kelly

Jeffrey M. Lowe, Esquire
Office of the State Attorney
Attorney for Appellant

No Appearance for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant's appeal from an order
modifying Appellee's sentence from an adjudication of guilt to withhold of adjudication.

After review of the record and the brief, this Court reverses the order of the trial court.

Relevant Factual Background and Trial Court Proceedings

On September 14, 2006, Appellee, Timothy Keller, while represented by counsel, entered a plea of no contest to the offense of Breach of Peace and was adjudicated guilty and ordered to pay a fine and costs of \$300. On January 13, 2011, over four years later, Mr. Keller, through counsel filed a Motion to Amend Adjudication to Adjudication Withheld. At hearing on February 24, 2011, the trial court granted the requested relief.

Issue

Did the trial court have the lawful authority to modify the previous sentence?

Modifications of Sentences

The original sentence imposed on September 14, 2006 was lawful. Pursuant to Florida Rule of Criminal Procedure 3.800(c), a trial court may modify or reduce a legal sentence imposed by it within sixty days after the sentence is imposed. After 60 days, the court no longer has jurisdiction to modify or change a sentence. *Reile v. State*, 901 So.2d 196, 197 (Fla. 4th DCA 2005).

There is no suggestion in the record of any good faith basis for Appellee to pursue a motion pursuant to Florida Rule of Criminal Procedure 3.850. Even if such basis did exist the time for filing any such motion has expired.

Conclusion

For the reasons set forth above, this court concludes that the order of the trial court modifying the original sentence was error. That order must be reversed and the original sentence reinstated.

IT IS THEREFORE ORDERED that the order of the trial court modifying Appellee's sentence from an adjudication of guilt to withhold of adjudication is reversed and the original sentence reinstated.

ORDERED at Clearwater, Florida this 10 day of October, 2011.

Original order entered on October 10, 2011 by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

cc: Honorable Lorraine M. Kelly
Office of the State Attorney
Timothy Keller, Appellee
Sonny Im, Esquire