

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 PASCO COUNTY  
APPELLATE DIVISION

JOHNSON DOYLE VINCENT,  
Appellant,

UCN: 512018AP000012APAXWS

Appeal No.: 18-AP-12

v.

L.T. No.: 16-MM-2495

STATE OF FLORIDA,  
Appellee.

\_\_\_\_\_ /

On appeal from Pasco County Court,  
Honorable Joseph Poblick

Christopher George DeLaughter, Esq.,  
for Appellant,

No response,  
for Appellee.

**ORDER AND OPINION**

Counsel for Appellant filed an *Anders*<sup>1</sup> brief asserting no arguable merit. Appellant filed a *pro se* brief raising multiple contentions of error. Appellant's convictions and sentences are affirmed without comment as to our review of the trial court record and as to all but one of Appellant's *pro se* claims. We write only to address Appellant's *pro se* claim that his conviction for Driving Under the Influence (DUI) violates the statute of limitations. For the reason detailed below, Appellant's DUI conviction and sentence are affirmed as to this issue as well.

**STATEMENT OF THE CASE AND FACTS**

On April 9, 2016, Appellant was arrested for trespassing. On June 12, 2016, Appellant was charged by Information with Trespass on Property other than a Structure in violation of section 810.09(1)(a)1, Florida Statutes (2015). On May 11, 2017, the State filed its first Amended Information again charging Appellant with Trespass on Property

<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

other than a Structure (count one) and adding a charge of DUI with damage to the property or person of another (count two) in violation of section 316.193(3)(c)1, Florida Statutes (2015).

On December 13, 2017, the State filed a Second Amended Information reducing count two to DUI *without* damage to the property or person of another (“simple DUI”) in violation of section 316.193(2)(a), Florida Statutes (2015). On December 14, 2017, the State filed a Third Amended Information that alleged additional facts related to count two. However, the charge for count two remained simple DUI.

On February 19, 2018, a jury found Appellant guilty of both counts after trial. The trial court adjudicated Appellant guilty of both counts and sentenced him to 11-months’ probation with 30-days’ time served for the DUI and no incarcerative or probationary sentence for the Trespass.

On February 23, 2018, Appellant timely-filed a Notice of Appeal. On July 19, 2018, counsel for Appellant filed an *Anders* brief in this case stating that no meritorious argument could be found to support the contention that the trial court committed reversible error. On September 6, 2018, Appellant mailed a letter raising multiple contentions of error which this Court treated as Appellant’s *pro se* brief.

### **STANDARD OF REVIEW**

Once an attorney has filed an *Anders* brief, the Court must conduct “a full and independent review of the record to discover any arguable issues apparent on the face of the record.” *In re Anders Briefs*, 581 So. 2d 149, 151 (Fla. 1991) (citing *Anders v. California*, 386 U.S. 738, 744). “If the appellate court finds that the record supports any arguable claims, the court must afford the indigent the right to appointed counsel, and it must give the state an opportunity to file a brief on the arguable claims.” *Id.*

Where an issue is not preserved for appellate review, an appellant’s claim is reviewed for fundamental error only. *F.B. v. State*, 852 So. 2d 226, 229-231 (Fla. 2003).

### **LAW AND ANALYSIS**

Appellant’s *pro se* brief contends that his DUI conviction violates the statute of limitations because he was charged with DUI *without* damage to the property or person of another by Information more than 13 months after his arrest.

The Florida Supreme Court recently held that failure to comply with the statute of limitations is not a fundamental error and therefore is not reviewable on appeal if not preserved below. See *State v. Smith*, 241 So. 3d 53 (Fla. 2018). Appellant did not raise this issue before the trial court. Therefore Appellant's contention of error was not preserved and Appellant's claim is not reviewable on appeal.

### **CONCLUSION**

Appellant did not preserve his statute of limitations claim below and a careful review of the trial court record shows no reversible error by the trial court.

It is therefore ORDERED and ADJUDGED that the trial court's order is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this \_\_\_\_ day of \_\_\_\_\_, 2018.

Original Order entered on October 3, 2018, by Circuit Judges Linda Babb, Kimberly Campbell, and Daniel D. Diskey.

*Copies to:*

**Honorable Joseph Poblick**

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c/o Christopher George DeLaughter, Esq.

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