

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

NORRIS HUBBARD, JR., )

Appellant, )

v. )

STATE OF FLORIDA, )

Appellee. )

Case No. 2D14-5977

Opinion filed January 17, 2018.

Appeal from the Circuit Court for Charlotte  
County; Amy R. Hawthorne, Judge.

Howard L. Dimmig, II, Public Defender, and  
Maureen E. Surber, Assistant Public  
Defender, Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, for Appellee.

LaROSE, Chief Judge.

In this Anders<sup>1</sup> appeal, Norris Hubbard, Jr., seeks review of his judgment and sentences for possession and sale of cocaine. We have jurisdiction. See Fla. R. App. P. 9.140(b)(1)(A), (F). The trial court sentenced Mr. Hubbard to concurrent terms of fifteen years' imprisonment on the sale and five years' imprisonment for the possession. The trial court designated him a habitual felony offender (HFO) for both

---

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

offenses. We affirm because our independent review of the record has not uncovered any preserved errors warranting reversal.

The HFO designation for Mr. Hubbard's possession offense is improper. Under section 775.084(1)(a)(3), Florida Statutes (2013), a defendant is subject to enhanced HFO sentencing when "[t]he felony for which the defendant is to be sentenced . . . is not a violation of [section] 893.13 relating to the . . . possession of a controlled substance." See also Coleman v. State, 927 So. 2d 1048, 1048 (Fla. 2d DCA 2006) ("Section 775.084(1)(a)(3) . . . precludes sentencing a defendant as a habitual felony offender for violating section 893.13 relating to purchase or possession of a controlled substance."); Virgil v. State, 884 So. 2d 373, 373-74 (Fla. 2d DCA 2004) (holding that a defendant may not be sentenced as a HFO for the offense of possession of a controlled substance); Roberts v. State, 753 So. 2d 136, 137 (Fla. 2d DCA 2000) ("Only drug offenses relating to the purchase or the possession of controlled substances are exempt from habitualization; defendants sentenced for offenses relating to the sale of narcotics do not enjoy the benefit of this statutory exemption.").

However, the record reflects an absence of objection from trial counsel during sentencing. Furthermore, Anders counsel failed to either correct the error or preserve it for our review via a motion to correct sentencing error under Florida Rule of Criminal Procedure 3.800(b). See Woodard v. State, 6 So. 3d 726, 727 (Fla. 2d DCA 2009) ("Woodard did not preserve this issue for appellate review because she did not object or file a motion to correct sentence pursuant to Florida Rule of [Criminal] Procedure 3.800(b)."); Young v. State, 988 So. 2d 1128, 1129 (Fla. 2d DCA 2008) ("However, we may not address this sentencing error on direct appeal because Mr. Young did not preserve this issue for appellate review by objecting during the

sentencing hearing or by filing a motion in accordance with Florida Rule of Criminal Procedure 3.800(b).").

Therefore, although we affirm Mr. Hubbard's judgment and sentences, we do so without prejudice to his right to file an appropriate postconviction motion addressing his sentence on the possession count. See Lyons v. State, 148 So. 3d 127, 127 (Fla. 2d DCA 2014) (affirming unpreserved sentencing error without prejudice to appellant's right to file appropriate postconviction motion).

Affirmed.

LUCAS and BADALAMENTI, JJ., Concur.