

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**MATTHEW TABY,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D13-4227

[November 25, 2015]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William L. Roby, Judge; L.T. Case No. 12-537CFA.

Jason M. Wandner of Jason M. Wandner, P.A., Miami Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

After unsuccessfully moving to dismiss charges in the circuit court, appellant withdrew his guilty plea and pleaded *nolo contendere* to charges in return for a favorable sentence. Although appellant raises intriguing questions concerning the application of section 775.0847(2), Florida Statutes (2012), summary affirmance of the trial court is appropriate pursuant to *Leonard v. State*, 760 So. 2d 114, 119 (Fla. 2000) and Florida Rule of Appellate Procedure 9.315(a). Florida Rule of Appellate Procedure 9.140(b)(2)(A)(i) allows a defendant to “expressly reserve the right to appeal a prior dispositive order of the lower tribunal.” The issue raised is not dispositive because a favorable ruling from us on the appeal would leave the defendant subject to prosecution of the charges under section 827.071(5)(a), Florida Statutes (2012). See *Brown v. State*, 376 So. 2d 382, 384 (Fla. 1979). The points raised on appeal are not among those allowed by Rule 9.140(b)(2)(A)(ii).

*Affirmed.*

GROSS, MAY and CONNER, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***