

Supreme Court of Florida

No. SC2026-0073

IN RE: AMENDMENT TO FLORIDA RULE OF APPELLATE PROCEDURE 9.140.

March 5, 2026

PER CURIAM.

The Court, on its own motion, amends Florida Rule of Appellate Procedure 9.140 (Appeal Proceedings in Criminal Cases) to expressly state that a defendant, from a guilty or nolo contendere plea, may appeal a preserved error in the sentencing process.¹

Rule 9.140(b)(2)(A) (Pleas) sets out the circumstances under which a defendant may appeal from a guilty or nolo contendere plea. Rule 9.140(b)(2)(A)(i) first specifies that “[a] defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.” Rule

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.; see also Fla. R. Gen. Prac. & Jud. Admin. 2.140(d).

9.140(b)(2)(A)(ii) then lists the appeals otherwise allowed when a defendant pleads guilty or nolo contendere, including “a sentencing error, if preserved.”

The First District Court of Appeal in a thoughtful opinion has noted uncertainty over the application of rule 9.140(b)(2)(A)(ii) when a defendant, after pleading guilty or nolo contendere, seeks to appeal an error in the sentencing process. *See Emerson v. State*, 412 So. 3d 917 (Fla. 1st DCA 2025), *review denied*, No. SC2025-0974, 2025 WL 3686361 (Fla. Dec. 19, 2025). We now expressly enumerate “an error in the sentencing process, if preserved,” in the rule’s list of appeals otherwise allowed.

The Court hereby amends the Florida Rules of Appellate Procedure as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendment shall become effective June 1, 2026, at 12:01 a.m. Because the amendment was not published for comment previously, interested persons shall have 75 days from the date of this opinion in which to file comments with the Court.²

2. All comments must be filed with the Court on or before May 19, 2026, as well as a separate request for oral argument if the

It is so ordered.

MUÑIZ, C.J., and LABARGA, COURIEL, GROSSHANS, FRANCIS, SASSO, and TANENBAUM, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS AMENDMENT.

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person filing the comment wishes to participate in oral argument, which may be scheduled in this case. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399; no additional copies are required or will be accepted.

APPENDIX

RULE 9.140. APPEAL PROCEEDINGS IN CRIMINAL CASES

(a) [No Change]

(b) Appeals by Defendant.

(1) [No Change]

(2) *Guilty or Nolo Contendere Pleas.*

(A) Pleas. A defendant may not appeal from a guilty or nolo contendere plea except as follows:

(i) Reservation of Right to Appeal. A defendant who pleads guilty or nolo contendere may expressly reserve the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved.

(ii) Appeals Otherwise Allowed. A defendant who pleads guilty or nolo contendere may otherwise directly appeal only:

- a. the lower tribunal's lack of subject matter jurisdiction;
- b. a violation of the plea agreement, if preserved by a motion to withdraw plea;
- c. an involuntary plea, if preserved by a motion to withdraw plea;
- d. a sentencing error, if preserved; ~~or~~
- e. an error in the sentencing process, if preserved; or
- e_f. as otherwise provided by law.

(B) [No Change]

(3)-(4) [No Change]

(c)-(i) [No Change]

Committee Notes

[No Change]

Court Commentary

[No Change]