

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

ANTONIO MULLER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D04-4635

Opinion filed October 3, 2006.

An appeal from Petition for Writ of Certiorari -- Original Jurisdiction.

Antonio Muller, pro se, Petitioner.

Charlie Crist, Attorney General, and Alan R. Dakan, Assistant Attorney General,  
Tallahassee, for Respondent.

PER CURIAM.

Petitioner seeks certiorari review of the trial court's denial of his motion for mitigation of sentence pursuant to Florida Rule of Criminal Procedure 3.800(c). Although an order denying a motion to mitigate sentence on the merits is not

appealable, an appellate court may exercise its certiorari jurisdiction to review a case where, as in the instant case, the motion was denied for lack of jurisdiction based on the motion's untimeliness. See Atkins v. State, 851 So. 2d 829 (Fla. 1st DCA 2003); Jolly v. State, 803 So. 2d 846 (Fla. 1st DCA 2001). In this case, petitioner's motion was filed within 60 days of this court's issuance of mandate on petitioner's direct appeal. Therefore, the trial court had jurisdiction to consider petitioner's motion, and its failure to do so is a departure from the essential requirements of the law. See Atkins; Jolly.

Accordingly, we grant the petition for writ of certiorari, vacate the order, and remand with directions to consider petitioner's motion on its merits.

ERVIN, WEBSTER, and THOMAS, JJ., CONCUR.