

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

ROBERTO RODRIGUEZ,

Appellant,

v.

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

CASE NO. 1D06-3262

FLORIDA PAROLE COMMISSION,
JAMES R. McDONOUGH, Secretary,
Florida Department of Corrections,

Appellees.

Opinion filed October 18, 2006.

An appeal from the Circuit Court for Leon County.
Terry P. Lewis, Judge.

Andrew F. Rier, Miami, for Appellant.

No appearance for Appellees.

PER CURIAM.

We conclude that the notice of appeal herein was not timely filed and, therefore, dismiss the appeal for lack of jurisdiction. The post-judgment motion filed by counsel was not timely, and therefore did not suspend rendition of the circuit court's final order. See Fire & Casualty Ins. Co. of Conn. v. Sealey, 810 So. 2d 988 (Fla. 1st DCA 2002). Because appellant was represented by counsel, the pro se "Motion for Relief

from Judgment” was a legal nullity. See Marsh v. State, 919 So. 2d 540 (Fla. 3d DCA 2005); Booker v. State, 807 So. 2d 800 (Fla. 1st DCA 2002). As such, the pro se motion likewise did not postpone rendition of the trial court’s final order.

APPEAL DISMISSED.

KAHN, and LEWIS, JJ., CONCUR; BENTON, J., DISSENTS WITH OPINION.

BENTON, J., dissenting.

I would deem counsel's motion for rehearing timely, treating it as an adoption of appellant's clearly timely pro se motion for relief from judgment, which was in the nature of a motion for rehearing. The trial court had acted on neither motion when the notice of appeal was filed, so the previously entered order denying extraordinary relief (to which the motions were addressed) was, in my view, "rendered by the filing of the notice of appeal." Fla. R. App. P. 9.020(h)(3).