

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

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

TYRONE DUPREE,

Appellant,

v.

CASE NO. 1D08-3973

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 27, 2009.

An appeal from the Circuit Court for Leon County.
Richard O. Watson, Judge.

Nancy A. Daniels, Public Defender and Terry Carley, Assistant Public Defender,
Tallahassee, for Appellant.

Bill McCollum, Attorney General; Giselle Denise Lyles and Brooke Poland,
Assistant Attorneys General, Tallahassee, for Appellee.

PER CURIAM.

Appellant seeks review of an amended judgment and sentence which lists his second-degree misdemeanor for driving while license suspended or revoked as a first-degree misdemeanor. Appellant raised this issue in a motion filed pursuant to

Florida Rule of Criminal Procedure 3.800(b)(2). The trial court eventually granted the motion but outside of the 60-day time period permitted by rule 3.800(b)(2)(B). The court granted the motion after 117 days had elapsed, even counting the granting of the state's motion for extension to respond. By operation of rule 3.800(b)(2), the motion was deemed denied after 60 days. Therefore, the trial court was without jurisdiction to enter the second amended judgment and sentence.

Accordingly, we quash the second amended judgment and sentence as entered without jurisdiction. We affirm the amended judgment and sentence but remand to the trial court to correct the scrivener's error by second amended judgment and sentence once jurisdiction returns to the trial court. The state properly concedes error on the issue of the scrivener's error. It is not necessary for Appellant to be present in court for the purpose of correcting the error.

VAN NORTWICK and PADOVANO, JJ., and BROWNING, JR., EDWIN B.,
SENIOR JUDGE, CONCUR.