

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

SAUL H. GARCIA, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D04-4174

Opinion filed February 23, 2005.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Hillsborough County; Daniel Lee Perry,  
Judge.

DAVIS, Judge.

Saul Garcia challenges the summary denial of his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Garcia, enjoying the benefits of the mailbox rule<sup>1</sup>, technically filed his motion for voluntary dismissal before the trial court ruled on his rule 3.800(a) motion. Thus, the trial court should have set aside its order denying Garcia's rule 3.800(a) motion, as it was

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<sup>1</sup> See Fla. R. App. P. 9.420(a)(2); Bulley v. State, 857 So. 2d 237 (Fla. 2d DCA 2003).

prematurely rendered, and granted Garcia's motion to dismiss. See Long v. State, 861 So. 2d 531 (Fla. 1st DCA 2003).

Accordingly, we reverse the trial court's order denying Garcia's rule 3.800(a) motion and remand with directions to grant Garcia's motion for voluntary dismissal.

Reversed and remanded.

NORTHCUTT and STRINGER, JJ., Concur.