

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOHN D. DENNEWITZ, SR.,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

Case No. 2D05-2135

Opinion filed September 28, 2005.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pasco County; Stanley R. Mills,
Judge.

WHATLEY, Judge.

John Dennewitz, Sr. appeals the denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a) contesting the jail credit awarded toward his March 25, 2004, sentence. We reverse and remand for the postconviction court to strike the motion as unauthorized since the direct appeal of his March 25, 2004, judgment and sentence was pending at the time his motion was

filed. See Golden v. State, 870 So. 2d 167, 168 (Fla. 2d DCA 2004) ("[R]ule 3.800(a) prohibits the filing of such a motion during the pendency of a direct appeal.").

Moreover, the claim became moot when Dennewitz's March 25, 2004, sentence was vacated, and he was resentenced in accordance with Dennewitz v. State, 899 So. 2d 476 (Fla. 2d DCA 2005). See Edwards v. State, 780 So. 2d 286, 286 (Fla. 2d DCA 2001) ("As for this appeal, however, it is moot because the sentence to which the [rule] 3.800 motion was directed has been vacated."). On remand, his motion should be stricken.

Reversed and remanded.

VILLANTI and WALLACE, JJ., Concur.