

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JAQUEAL HARRIS,)	
)	
Appellant,)	
)	
v.)	Case No. 2D12-2176
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed November 9, 2012.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Pinellas County; Philip J. Federico,
Judge.

CASANUEVA, Judge.

Jaqueal Harris has appealed the summary denial of his motions to withdraw plea after sentencing. We reverse because the circuit court lacked jurisdiction to rule on his motions.

After entering an open plea to one count of second-degree murder, Mr. Harris was sentenced on September 30, 2011, in Pinellas County Circuit Court case number 09-1526-CF to life in prison without parole. On October 26 and 27, 2011, Mr.

Harris filed motions to withdraw his plea. However, prior to the filing of these motions or rendition of the order denying them on March 21, 2012, counsel had filed a notice of appeal in this same circuit court case number on October 17, 2011. As a result, the circuit court was divested of jurisdiction to consider Mr. Harris's motions. See Clemons v. State, 3 So. 3d 364, 365 (Fla. 2d DCA 2009) ("Generally, the direct appeal of a defendant's judgment and sentence divests the trial court of jurisdiction to rule on a motion for postconviction relief in the case from which the appeal has been taken.").

Accordingly, we reverse the circuit court's order denying Mr. Harris's motions to withdraw plea with directions to the circuit court to dismiss them for lack of jurisdiction. This dismissal shall be without prejudice to Mr. Harris's right to refile a motion under Florida Rule of Criminal Procedure 3.850 once the mandate issues in his direct appeal, case number 2D11-5418.

Reversed and remanded with directions.

DAVIS and LaROSE, JJ., Concur.