

# Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed February 6, 2008.

Not final until disposition of timely filed motion for rehearing.

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No. 3D07-3207

Lower Tribunal No. 03-3793

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**Joel Barcelona,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Leonard E. Glick, Judge.

Joel Barcelona, in proper person.

Bill McCollum, Attorney General, for appellee.

Before WELLS, ROTHENBERG, and SALTER, JJ.

PER CURIAM.

Joel Barcelona appeals an order denying his motion to mitigate his sentence. We dismiss the appeal as the denial of such an order cannot be appealed. Williams v. State, 944 So. 2d 549, 550 (Fla. 3d DCA 2006). While the denial of a motion under Florida Rule of Criminal Procedure 3.800(c) may be treated as a petition for writ of certiorari if a trial court mistakenly found the motion to be untimely, see Diaz v. State, 931 So. 2d 1002, 1004 (Fla. 3d DCA 2006), that did not occur here.

Rather, the trial court was correct to deny the motion as untimely. This Court issued the mandate in Barcelona's original appeal on June 12, 2006. Pursuant to the sixty-day period of Rule 3.800(c) as measured from a defendant's original appeal, the trial court had jurisdiction until August 11, 2006. Barcelona admits he filed his motion on September 27, 2007, well beyond the sixty-day limit. His argument that he received subsequent mandates from this Court is without merit since these later mandates stemmed from other post-conviction motions he filed and not from his original appeal. As the trial court was correct regarding the motion's timeliness, we dismiss the appeal.

Dismissed.