

Third District Court of Appeal

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

Opinion filed March 26, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-407

Lower Tribunal No. 01-21585

Joshua Powell,
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, Diane Ward, Judge.

Joshua Powell, in proper person.

Bill McCollum, Attorney General, for appellee.

Before RAMIREZ and SALTER, JJ., and SCHWARTZ, Senior Judge

PER CURIAM.

Joshua Powell, pro se, appeals the trial court's denial of his motion to mitigate sentence under Florida Rule of Criminal Procedure 3.800. The trial court

denied the motion for lack of jurisdiction, noting that it was filed November 15, 2007, over sixty days after Powell was sentenced.

Under Rule 3.800(c), a motion to mitigate sentence is also timely if filed “within 60 days after receipt by the court of a mandate issued by the appellate court on affirmance of the judgment and/or sentence on an original appeal.” In this case, Powell claims this Court’s mandate in a prior appeal, Powell v. State, 963 So. 2d 717 (Fla. 3d DCA 2007), was entered October 12, 2007, such that his motion was timely.

However, the prior case in this Court referred to by Powell was not an original appeal from the judgment or sentence. Rather, that case reviewed the denial of other post-conviction motions by Powell. As a result, the trial court correctly held that Powell’s 2007 motion to mitigate was untimely.

Affirmed.