

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JEROME ALLEN,

Appellant,

v.

Case No. 5D19-1580

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 7, 2020

Appeal from the Circuit Court
for Brevard County,
Kelly J. McKibben, Judge.

James S. Purdy, Public Defender, and
Nancy Ryan, Assistant Public
Defender, Daytona Beach, for
Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Pamela J. Koller,
Assistant Attorney General, Daytona
Beach, for Appellee.

SASSO, J.

Jerome Allen appeals the sentence imposed by the circuit court on remand from an earlier appeal to this Court, case number 5D13-1957. We sua sponte treat this appeal as a motion to enforce. See *Ramsay v. State*, 291 So. 3d 963, 965 (Fla. 4th DCA 2020) (noting disparate treatment of appeals challenging lower tribunal's actions effectuating

mandates and concluding appeal should be treated as motion to enforce); *Hankerson v. State*, 897 So. 2d 555 (Fla. 5th DCA 2005) (treating petition for writ of mandamus as motion to enforce mandate). In so considering, we deny the motion. See *Rembert v. State*, 45 Fla. L. Weekly D1670 (Fla. 1st DCA July 13, 2020) (affirming trial court order declining to follow appellate mandate that required resentencing under *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), due to intervening authority of *State v. Michel*, 257 So. 3d 3 (Fla. 2018), and *Franklin v. State*, 258 So. 3d 1239 (Fla. 2018)); *Marshall v. State*, 44 Fla. L. Weekly D2561 (Fla. 2d DCA Oct. 18, 2019) (noting there should be exception to general rule binding parties to law of case when intervening decision by higher court is contrary to decision reached on former appeal, rendering correction of error unnecessary by appeal to higher court).

MOTION TO ENFORCE ORDER DENIED.

LAMBERT and TRAVER, JJ., concur.