

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

ANTONIO ARRIETA,

Appellant,

v.

Case No. 5D19-2342

STATE OF FLORIDA,

Appellee.

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Opinion filed August 14, 2020

Appeal from the Circuit Court  
for Brevard County,  
Jeffrey Mahl, Judge.

James S. Purdy, Public Defender, and Scott  
G. Hubbard, Assistant Public Defender,  
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Nora Hutchinson Hall,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Antonio Arrieta appeals the dismissal of his motion to correct sentencing error filed pursuant to Florida Rule of Criminal Procedure 3.800(b). We reverse.

In the underlying proceeding, the trial court found that Arrieta violated his probation and sentenced him to seventy-two months in the Department of Corrections. Arrieta appealed that order to this Court. Following the notice of appeal, but before he filed an appellate brief, Arrieta moved to correct his sentence under rules 3.800(a) and/or

3.800(b). The trial court dismissed Arrieta's motion, finding that it did not have jurisdiction because rule 3.800(a) prohibits the filing of a motion to correct sentencing error during the pendency of an appeal.

Although the trial court was correct with regard to rule 3.800(a), Arrieta's motion was also filed pursuant to rule 3.800(b). That rule provides, "Motion Pending Appeal. If an appeal is pending, a defendant or the state may file in the trial court a motion to correct a sentencing error. The motion may be filed by appellate counsel and must be served before the party's first brief is served." Fla. R. Crim. P. 3.800(b)(2). Thus, as the State properly concedes, the trial court's order of dismissal was clear error. See Brady v. State, 250 So. 3d 803, 804 (Fla. 2d DCA 2018) (finding error in trial court's dismissal of defendant's rule 3.800(b)(2) motion during pendency of appeal).

On remand, the trial court should rule on the merits of Arrieta's motion under rule 3.800(b).

REVERSED AND REMANDED.

COHEN, WALLIS and GROSSHANS, JJ., concur.