

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

STEVEN PHILLIP BALLOW,

Petitioner,

v.

Case No. 5D20-267

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed November 6, 2020

Petition for Certiorari Review of Order
from the Circuit Court for Citrus County,
Richard A. Howard, Judge.

Steven Phillip Ballow, Lowell, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Richard A. Pallas, Jr.,
Assistant Attorney General, Daytona
Beach, for Respondent.

WALLIS, J.

Petitioner, Steven Phillip Ballow, seeks certiorari review of the trial court's dismissal of his Motion for Modification of Terms and Conditions of Probation (the motion). We agree with Petitioner that the trial court's ruling departs from the essential requirements of the law, and therefore, grant the petition.

In the motion, Petitioner requested a modification of his probation pursuant to section 948.03, Florida Statutes (2018). Specifically, Petitioner requested a termination or reduction of his fifteen-year probation and to transfer his probation from Citrus to Pinellas County. The trial court dismissed the motion, reasoning that it lacked jurisdiction based on the time limitation presented in Florida Rule of Criminal Procedure 3.800(c).

Section 948.03 permits a trial court to "rescind or modify **at any time** the terms and conditions theretofore imposed by it upon the probationer." § 948.03(2), Fla. Stat. (emphasis added); see Gearhart v. State, 885 So. 2d 415, 417 (Fla. 5th DCA 2004) ("Case law recognizes that a trial court may, pursuant to section 948.03(6), Florida Statutes, at any time . . . modify any probation conditions . . ."). Because the motion sought a modification pursuant to section 948.03, the trial court departed from the essential requirements of the law by relying on rule 3.800(c) to dismiss the motion. See Enea v. State, 171 So. 3d 219, 221 (Fla. 5th DCA 2015) (holding the trial court departed from the essential requirements of the law by relying on rule 3.800(c) to dismiss defendant's motion to terminate probation when the trial court retained authority to consider the motion pursuant to chapter 948, Florida Statutes). Therefore, we grant the petition and remand for the trial court to consider the merits of the motion.¹

PETITION GRANTED; ORDER QUASHED and REMANDED.

EVANDER, C.J., and HARRIS, J., concur.

¹ We express no opinion on the merits of Petitioner's motion.