

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

JULY TERM 2004

STEPHEN COTTERELL,

Appellant,

v.

CASE NO. 5D04-3346

STATE OF FLORIDA,

Appellee.

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Opinion filed December 10, 2004

3.800 Appeal from the Circuit Court  
for Osceola County,  
Thomas W. Turner, Judge.

Stephen Cotterell, Jasper, *pro se*.

No Appearance for Appellee.

SHARP, W., J.

Cotterell appeals from the summary denial of his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). The order denying his motion was rendered August 24, 2004 and Cotterell's notice of appeal, which was delivered to prison officials on September 28, 2004, was filed for purposes of the "mail box rule,"<sup>1</sup> five days late. Cotterell responded to our show cause order that his appeal should not be dismissed as untimely because the order denying relief did not inform him he had 30 days in which to file a notice of appeal.

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<sup>1</sup> See *Haag v. State*, 591 So. 2d 614 (Fla. 1992).

We have no choice in this case. We must dismiss for lack of jurisdiction. *See Dunbar v. State*, 688 So. 2d 993 (Fla. 5th DCA 1997). However, we note again our discomfort with the fact that Florida Rule of Criminal Procedure 3.850 requires a defendant be told he or she has 30 days in which to appeal and Rule 3.800 does not. It is a discrepancy without a reason and a trap for the unwary.

Recently the Florida Supreme Court adopted an amendment to Florida Rule of Criminal Procedure 3.800 to repair another equally illogical discrepancy between Rule 3.800(a) and Rule 3.850. The amendment authorizes defendants under *both* rules to file motions for rehearing, thereby tolling the time to file an appeal.<sup>2</sup> Prior to the amendment, defendants who filed motions for rehearing under Rule 3.800(a) often lost their rights to appeal because their motions for rehearing did not toll the time to appeal and their notices of appeal, filed after denial of their motions for rehearing, were untimely. Perhaps this remaining discrepancy should also be addressed.

DISMISSED.

THOMPSON and TORPY, JJ., concur.

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<sup>2</sup> *See In Re Amendments to Florida Rules of Criminal Procedure*, 29 Fla. L. Weekly S568 (Fla. Oct. 7, 2004) (amendments become effective on January 1, 2005).