

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MILTON BULLOCK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D03-2312

Opinion filed June 24, 3004.

An appeal from an order of the Circuit Court of Duval County. Karen K. Cole, Judge.

Nancy A. Daniels, Public Defender, and Carl S. McGinnes, Assistant Public Defender,
Tallahassee, for Appellant.

Charles J. Crist, Jr., Attorney General, and Shasta W. Kruse and Karen M. Holland,
Assistant Attorney Generals, Tallahassee, for Appellee.

PER CURIAM.

Appellant seeks review of an order of the trial court striking his motion to
withdraw plea filed pursuant to Rule 3.170(1), Florida Rules of Criminal Procedure.

The State acknowledges that the trial court erred by striking appellant's motion. On
the procedural facts of the present case, the notice of appeal filed by appellant, some
five days after the timely motion to withdraw a plea, did not automatically divest the

trial court of jurisdiction to consider the motion to withdraw. “[A] pending motion to correct a sentence or order of probation or a motion to withdraw the plea after sentencing shall not be affected by the filing of a notice of appeal from a judgment of guilt. In such instance, the notice of appeal shall be treated as prematurely filed and the appeal held in abeyance until the filing of a signed, written order disposing of such motion.” Fla. R. App. P. 9.020(h)(3).

The order striking appellant’s motion is VACATED, and the case is REMANDED for further proceedings on appellant’s motion.

KAHN, DAVIS and PADOVANO, JJ., CONCUR.

