

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2007*

**PHILMON MOWATT,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D07-2721

[August 22, 2007]

PER CURIAM.

We reverse the June 11, 2007 circuit court order denying appellant's motion to mitigate sentence pursuant to Florida Rule of Criminal Procedure 3.800(c), because the lower court does not have jurisdiction while appellant's direct appeal is pending. *See Daniels v. State*, 712 So. 2d 765 (Fla. 1998); *Lindsay v. State*, 842 So. 2d 1057 (Fla. 4th DCA 2003). We remand for the lower court to stay the proceedings until the direct appeal is resolved or to dismiss the motion without prejudice to appellant refiling his claim if he receives an adverse ruling on his direct appeal and the lower court regains jurisdiction.

We would also recommend removing the language from orders denying rule 3.800(c) motions which states that the defendant may appeal within 30 days. There is no right to appeal the denial of a rule 3.800(c) motion. *Howard v. State*, 914 So. 2d 455 (Fla. 4th DCA 2005).

WARNER, STEVENSON and MAY, JJ., concur.

\* \* \*

Appeal of order denying rule 3.800(a) motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mily Rodriguez-Powell, Judge; L.T. Case No. 05-18646 CF10A.

Philmon Mowatt, Fort Lauderdale, pro se.

No appearance required for appellee.

***Not final until disposition of timely filed motion for rehearing.***