

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

ANTHONY G. STEWART,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

No. 4D08-2544

[September 10, 2008]

PER CURIAM.

Anthony Stewart petitions this court for a writ of certiorari seeking review of an order denying his rule 3.800(c) motion as untimely filed. The State agrees that the motion to mitigate sentence was timely filed within sixty days of this court's mandate on direct appeal. *Stewart v. State*, 976 So.2d 82 (Fla. 4th DCA 2008).

Accordingly, we grant the petition and remand this case for the circuit court to consider the rule 3.800(c) motion on the merits. *See Vrobel v. State*, 884 So.2d 471 (Fla. 4th DCA 2004); *McCalla v. State*, 814 So.2d 1209, 1210 (Fla. 4th DCA 2002).

FARMER, TAYLOR and MAY, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Steven J. Levin, Judge; L.T. Case No. 432006CF626A.

Anthony G. Stewart, Perry, pro se.

Bill McCollum, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for respondent.

Not final until disposition of timely filed motion for rehearing.