

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2011*

**STATE OF FLORIDA,**  
Appellant,

v.

**DARRIN WILLIAMS,**  
Appellee.

No. 4D10-237

[March 2, 2011]

PER CURIAM.

We affirm the trial court's mitigation of appellant's sentence. Pursuant to Florida Rule of Criminal Procedure 3.800(c), the motion to mitigate was filed within sixty days of imposition, but the hearing on the motion was held more than sixty days from imposition of the original sentence. Recently, in *Schlabach v. State*, 37 So. 3d 230 (Fla. 2010), our supreme court construed the time periods of the rule and determined that as long as the defendant files the motion to reduce or modify sentence within the sixty-day time period, the trial court does not lose jurisdiction solely because no hearing was scheduled and no order was entered within the sixty-day time period. In doing so the court quashed our court's decision in *State v. Schlabach*, 1 So. 3d 1091 (Fla. 4th DCA 2009), upon which the state has relied in its brief.

*Affirmed.*

WARNER, STEVENSON and TAYLOR, JJ., concur.

\* \* \*

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carlos Augusto Rodriguez, Judge; L.T. Case No. 09-9421 CF10A.

Pamela Jo Bondi, Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for appellant.

Carey Haughwout, Public Defender, and Susan D. Cline, Assistant Public Defender, West Palm Beach, for appellee.

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