

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

MERLAN DAVIS, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
\_\_\_\_\_ )

CASE NO. 2D01-3614

Opinion filed November 2, 2001.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court  
for Pinellas County;  
Richard A. Luce, Judge.

DAVIS, Judge.

Merlan Davis appeals the summary denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Davis's direct appeal is currently pending. Thus, the trial court was without jurisdiction to rule on Davis's motion to correct illegal sentence. See Fla. R. Crim. P. 3.800(a). A prematurely filed motion to correct illegal sentence should be dismissed by a trial court and may be refiled after the direct appeal is final. Phillibert v. State, 768 So. 2d 1171, 1172 (Fla. 2d DCA

2000). In the alternative, a trial court may stay the motion pending the resolution of the direct appeal. Id. Accordingly, we vacate the order of the trial court and remand with instructions either to dismiss Davis's 3.800(a) motion without prejudice to his right to refile after his direct appeal is final or to stay the motion pending the outcome of the direct appeal.

Reversed and remanded.

THREADGILL, A.C.J., and GREEN, J., Concur.