

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

JEFFERY L. POPE, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 )  
 \_\_\_\_\_ )

Case No. 2D05-756

Opinion filed September 28, 2005.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Collier County; Lawrence D. Martin,  
Judge.

DAVIS, Judge.

Jeffery L. Pope appeals the trial court's denial of his motion to correct an illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). The trial court denied the motion as moot, finding that the sentence that Pope challenged had been vacated and ordered that Pope be resentenced in accordance with Pope v. State, 884 So. 2d 328 (Fla. 2d DCA 2004). Because Pope has not been resentenced, his motion is premature, not moot. Nevertheless, the trial court should have dismissed, and

not denied, the motion. See Edwards v. State, 780 So. 2d 286 (Fla. 1st DCA 2001). Therefore, we reverse the trial court's order denying Pope's rule 3.800(a) motion and remand for entry of an order of dismissal, which shall be without prejudice to any right Pope may have to refile his claim, if necessary, after resentencing.

Reversed and remanded with instructions.

VILLANTI and WALLACE, JJ., Concur.