

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DARRICK L. McFADDEN,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D11-6172

Opinion filed November 8, 2013.

Appeal from the Circuit Court for Lee
County; Jack R. Schoonover, Associate
Senior Judge.

Howard L. Dimmig, II, Public Defender, and
Karen M. Kinney, Assistant Public Defender,
Bartow, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Timothy A. Freeland,
Assistant Attorney General, Tampa, for
Appellee.

BLACK, Judge.

Darrick L. McFadden appeals the trial court's order denying the State's
motion filed pursuant to section 921.186, Florida Statutes (2010), to reduce or suspend

his sentence for providing substantial assistance. We affirm the trial court's order without comment. In so affirming, however, we certify conflict with the First District's opinion in Cooper v. State, 106 So. 3d 32, 32 (Fla. 1st DCA 2013), which holds "that orders denying motions filed pursuant to section 921.186, Florida Statutes, are not appealable."

McFadden argues on appeal that the trial court erred because it based the denial upon the consideration of improper factors. Though we agree with the First District that the decision to reduce or suspend a defendant's sentence falls squarely within the discretion of the trial court, see Cooper, 106 So. 3d at 32, we nonetheless hold that we have jurisdiction to review a trial court's order denying a motion filed pursuant to section 921.186 where the defendant alleges, as McFadden has here, that the trial court misapplied the statute. See United States v. Manella, 86 F.3d 201, 203 (11th Cir. 1996) (holding that although the lower court's decision to grant or deny the government's motion to reduce the defendant's sentence for providing substantial assistance "is a discretionary one from which an appeal generally will not lie," the appellate court's exercise of jurisdiction to review the order is proper where the defendant has alleged a misapplication of the law).

To the extent that Cooper holds that an order denying a motion filed pursuant to section 921.186 is never appealable, we certify conflict.

Affirmed; conflict certified.

DAVIS, C.J., and ALTENBERND, J., Concur.