

Supreme Court of Florida

No. 95,707

**AMENDMENTS TO FLORIDA RULES
OF CRIMINAL PROCEDURE 3.111(e) and 3.800 and
FLORIDA RULES OF APPELLATE PROCEDURE
9.020(h), 9.140, and 9.600**

[November 12, 1999]

CORRECTED OPINION

PARIENTE, J.

In December 1998, Chief Justice Harding created the Criminal Appeal Reform Act Committee (the CARA Committee)¹ to review all rules of procedure affected by the Criminal Appeal Reform Act of 1996 (the Act) in light of unexpected problems that arose in implementing the intent of the Act, especially with regard to the early detection and correction of sentencing errors. The Court urged the Committee to expedite its deliberations, but to elicit input from all other

¹The Committee is composed of a panel of distinguished appellate and trial judges. Judge Chris W. Altenbernd was appointed to chair the committee. Other members include Judge Michael E. Allen, Judge Michael Chavies, Judge O.H. Eaton, Judge Michael A. Genden, Judge Nelly Khouzam, and Judge Stan R. Morris.

related rules committees and from attorneys with expertise in the field.²

Accordingly, the CARA Committee filed this emergency petition requesting this Court to consider amendments to the Florida Rules of Criminal and Appellate Procedure. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The comments received were overwhelmingly in favor of these amendments as providing a truly effective mechanism for the trial courts to correct sentencing errors at their earliest opportunity. After considering the comments received in response to the proposed amendments, we hereby adopt the rules proposed by the CARA Committee as set forth in the appendix to this opinion.

In Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103, 1104 (Fla. 1996), this Court considered the effect of two primary provisions of the Act:

(3) An appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved or, if not properly preserved, would constitute fundamental error. A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court or, if not properly preserved, would constitute fundamental error.

²The Committee received input from representatives of the Criminal Rules Committee, the Appellate Rules Committee, the Attorney General's Office, and the Public Defenders' Offices.

(4) If a defendant pleads nolo contendere without expressly reserving the right to appeal a legally dispositive issue, or if a defendant pleads guilty without expressly reserving the right to appeal a legally dispositive issue, the defendant may not appeal the judgment or sentence.

§ 924.051(3)-(4), Fla. Stat. (Supp. 1996) (emphasis supplied). The Legislature intended that "all terms and conditions of direct appeal and collateral review be strictly enforced . . . to ensure that all claims of error are raised and resolved at the first opportunity." § 924.051(8), Fla. Stat. (Supp. 1996).

In response to the Act, this Court adopted Florida Rule of Criminal Procedure 3.800(b), "[b]ecause many sentencing errors are not immediately apparent at sentencing, [and] we felt that this rule would provide an avenue to preserve sentencing errors and thereby appeal them." Amendments, 696 So. 2d at 1105 (emphasis supplied). Thus, we adopted rule 3.800(b) to accomplish two purposes. First, we intended to provide defendants with a mechanism to correct sentencing errors in the trial court at the earliest opportunity, especially when the error resulted from a written judgment and sentence that was entered after the oral pronouncement of sentence. Second, we intended to give defendants a means to preserve these errors for appellate review.

Rule 3.800(b) currently allows criminal defendants to file a motion to correct sentencing errors in the trial court within thirty days after the sentencing

proceeding.³ Operating in tandem with rule 3.800(b), Florida Rule of Appellate Procedure 9.020(h) delays the "rendition" of the final order until the trial court disposes of the rule 3.800(b) motion. Thus, the defendant currently has thirty days to file the notice of appeal after the trial court rules on any sentencing error preserved through a rule 3.800(b) motion.

These statutory and rule changes embodied a policy decision intended to "relieve the workload of appellate courts" and to "place correction of alleged errors in the hands of the judicial officer [the trial judge] best able to investigate and to correct any error." Maddox v. State, 708 So. 2d 617, 621 (Fla. 5th DCA 1998) (en banc), review granted, 718 So. 2d 169 (Fla. 1998). Unfortunately, these statutory and rule changes did not have their intended effect of conserving the judicial resources of the appellate courts, while at the same time providing for sentencing errors to be addressed at their earliest opportunity in the trial courts.

The Act has opened an entirely new debate in the appellate courts as to what constitutes fundamental sentencing error on appeal and whether any unpreserved sentencing error, no matter how egregious, can be considered on

³Originally, the rule provided defendants with only ten days following the sentencing proceeding to file the motion to correct the sentencing error. See Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103, 1105 (Fla. 1996). That short period proved unworkable, however, and the period was expanded to thirty days. See id.

appeal. The Fifth District has broadly stated that no unpreserved sentencing error will be considered fundamental or correctable on direct appeal. See Maddox, 708 So. 2d at 620. In contrast, the First, Second, Third, and Fourth Districts continue to recognize that errors in sentencing can constitute "fundamental error" that can be raised on direct appeal despite the lack of preservation. See Nelson v. State, 719 So. 2d 1230 (Fla. 1st DCA 1998) (en banc); Bain v. State, 730 So. 2d 296 (Fla. 2d DCA 1999) (en banc); Harriel v. State, 710 So. 2d 102 (Fla. 4th DCA 1998) (en banc); Jordan v. State, 728 So. 2d 748 (Fla. 3d DCA 1998), review granted, 735 So. 2d 1285 (Fla. 1999). This Court has accepted jurisdiction over the Fifth District's decision in Maddox, and dozens of other related cases, in which this Court has been asked to resolve this split in the districts by determining whether unpreserved sentencing errors can be raised on direct appeal.

In reaching its conclusion that no sentencing error should be considered fundamental, the Fifth District rhetorically asked "why should there be 'fundamental' error where the courts have created a 'failsafe' procedural device to correct any sentencing error or omission at the trial court level?" Maddox, 708 So. 2d at 620. Unfortunately, however, as the CARA Committee discovered, the reality is that rule 3.800(b) as it is currently written has fallen far short of the goal

of providing a "failsafe" method for defendants to seek to have sentencing errors corrected in the trial court and thereby preserve them for appellate review. The plethora of appellate cases addressing the issue of whether unpreserved sentencing error may be presented on appeal demonstrates that despite the availability of the present rule 3.800(b), many sentencing errors have gone unnoticed and uncorrected by trial counsel, the prosecutor, and the trial court. There are multiple reasons why rule 3.800(b) has failed to provide a "failsafe" method to detect, correct and preserve sentencing errors.

Apparently, in many circuits the written judgment and sentence is not entered during the sentencing hearing when the defendant and his or her attorney are present. It has been asserted that in many instances defendants and their attorneys do not even receive copies of their sentences within the thirty-day period the present rules allow for filing a motion to correct the sentence. This problem may have arisen in part because there is no present procedural rule that requires service of the written judgment within a specified period of time.⁴ Thus,

⁴No procedural rule currently requires that defendants receive a copy of their conviction and sentence within the thirty-day period allowed for defendants to bring a rule 3.800(b) motion. We have responded to this problem in another opinion issued today, Amendments to Florida Rules of Criminal Procedure 3.670 & 3.700(b), No. 95,117 (Fla. Nov. 12, 1999). In that case, we have adopted a proposal by the Criminal Rules Committee to amend rule 3.670 to require service of the judgment and sentence on defense counsel within fifteen days. In addition, the CARA Committee is testing a computer program that would use a database shared by the court, the clerk's office, the prosecutors, and the public defenders in order to generate rapid and accurate sentencing documents

many errors that are only discovered when the written sentence is examined, such as the frequently occurring errors involving deviations between the oral pronouncement and written sentences, may only be detected when appellate counsel is preparing the appellate brief and has the opportunity to review the transcript of the sentencing hearing and the written judgment.

An additional reason that rule 3.800(b) as currently written has failed to provide a workable mechanism for defendants to correct these errors is that sentencing, which once was a straightforward function for trial courts, has become increasingly complex as a result of multiple sentencing statutes that often change on a yearly basis. In addition, trial counsel have come to rely upon appellate counsel to detect these errors and raise them on appeal.

After consideration of the proposed amendments and the comments received from interested parties, we conclude that adoption of these amendments will provide an effective, and hopefully more "failsafe," procedural mechanism through which defendants may present their sentencing errors to the trial court and thereby preserve them for appellate review. The CARA Committee stated it was aware that the Court had considered and rejected a proposal in 1996 that would have allowed appellate courts to relinquish jurisdiction to trial courts in

during the sentencing hearing.

order to obtain rulings on unpreserved sentencing errors. See Amendments, 696 So. 2d at 1104. However, rather than suggesting relinquishment that would result in increasing the appellate workload, the CARA Committee concluded that:

Rule 3.800(b) should be revised to give the State the right to file a motion pursuant to Rule 3.800(b) and also to give both parties a limited right to file a motion in the trial court during the initial stages of the appeal without requiring the appellate court to enter any order relinquishing jurisdiction.

(Emergency Pet. to Amend Fla. Rule of Crim. Pro. 3.800 and Fla. Rule of App. Pro. 9.010(h), 9.140, and 9.600 at 4.)

The most important change in the new rule is that it significantly expands the period in which a motion to correct a sentencing error can be filed in the trial court. As with the current rule, rule 3.800(b)(1) will allow a motion to correct a sentencing error to be filed in the trial court during the time allowed for the filing of a notice of appeal. However, under the new rule 3.800(b)(2), if a notice of appeal has been filed, a motion to correct a sentencing error can also be filed in the trial court at any time until the first appellate brief is filed. The deadline for filing the first appellate brief is then extended until ten days after the clerk of the circuit court transmits the supplemental record from the proceedings held on the motion to correct the sentencing error, which includes the motion, the order, any amended sentence, and the transcript if designated.

Thus, an advantage of this amendment is that it will give appellate counsel, with expertise in detecting sentencing errors, the opportunity to identify any sentencing errors and a method to correct these errors and preserve them for appeal. Unless the motion to correct the sentencing error states that appellate counsel will represent the movant in the trial court, trial counsel will represent the defendant. If the State files the motion, trial counsel will represent the defendant.

Another advantage of the rule is that it requires the movant to specifically identify the alleged sentencing error and propose how the trial court should correct the error. The rule further requires a response within fifteen days either admitting or denying the sentencing error. In many cases, we anticipate that clear errors will be corrected by agreement of the parties, thus eliminating the necessity for resolution by the appellate court and minimizing the involvement of the trial court. In appeals involving only the issue of a sentencing error, this resolution would allow for dismissal of the appeal after the error has been corrected.

For those sentencing errors that cannot be resolved by the good-faith cooperation of the parties, subdivision 3.800(b)(1)(B) provides the time limits for the trial court to dispose of the motion so as to minimize any delays in the appellate process. Unless the trial court determines that the motion can be resolved as a matter of law, the trial court must hold a calendar call within twenty

days after the motion is filed to either rule on the motion or determine the need for an evidentiary hearing. If an evidentiary hearing is needed, it shall be set within twenty days of the calendar call. However, the trial court must rule on the motion within sixty days of filing or it is deemed denied. The comments to the proposed rule state that "trial courts and counsel are strongly encouraged to cooperate to resolve these motions as expeditiously as possible because they delay the appellate process." Trial courts thus have the opportunity to address and correct sentencing errors, which might eliminate the need for an appeal in many cases and also reduce the number of postconviction motions related to sentencing and appeals therefrom.

Any delay to the appellate process caused by these amendments will be more than offset by the fact that the parties will now be given a workable procedure to correct these sentencing errors in the trial court before the appeal and to preserve these errors for appellate review. This early correction of these sentencing errors will further the goal of judicial efficiency as well as ensure the integrity of the judicial process.

We now address three concerns raised by the parties filing comments on the proposed amendments. Many of those filing comments expressed concern that under the new rule, as proposed, the State will now be allowed to file a

motion to correct a sentencing error. During oral argument, the chair of the CARA Committee represented that the intent of the amendment was to give the State the opportunity to file motions to correct sentencing errors only if the correction would benefit the defendant. Accordingly, we have clarified the rule to provide that the State may file a motion to correct a sentencing error only if the correction of the error benefits the defendant.

This amendment is not intended to alter the substantive law of the State concerning whether a change to the defendant's sentence violates the constitutional prohibition against double jeopardy. See, e.g., Cheshire v. State, 568 So. 2d 908, 913 (Fla. 1990); Goene v. State, 577 So. 2d 1306, 1308-09 (Fla. 1991); Troupe v. Rowe, 283 So. 2d 857, 859-60 (Fla. 1973). As clarified, this rule will help ensure that when the State discovers a sentencing error that has disadvantaged the defendant, it too will have a concomitant duty to bring this error to the attention of the trial court through the appropriate motion. We would anticipate that in these situations, a stipulation of the parties could be submitted to the trial court to achieve this correction immediately.

We secondly address the concern of some of the public defenders and the Florida Appellate and Criminal Rules Committees that the amendments would not allow a rule 3.800(a) motion to be filed during the pendency of the appeal.

However, the amended rule is intended to provide one mechanism whereby all sentencing errors may be preserved for appellate review. The comments to the proposed rule defines a "sentencing error" as including "harmful errors in orders entered as a result of the sentencing process. This includes errors in orders of probation, orders of community control, cost and restitution orders, as well as errors within the sentence itself." The amendment to rule 3.800(a) will make it clear that a rule 3.800(b) motion can be used to correct any type of sentencing error, whether we had formerly called that error erroneous, unlawful, or illegal. Thus, a party can correct an illegal sentence through a rule 3.800(b) motion, or alternatively, following the appeal, a party may file a 3.800(a) motion to correct the sentence in the trial court.

Allowing a rule 3.800(a) motion to be filed during the pendency of the appeal could frustrate the entire scheme of the amendments to rule 3.800(b) proposed by the CARA committee. This is especially so in light of the continuing difficulty of defining precisely what type of sentencing errors constitute illegal sentences. In those small number of cases involving illegal sentences discovered after the briefs have been filed, which necessitate immediate resolution because the defendant would have served the legal portion of the sentence prior to the conclusion of the appeal, we would urge the State and the defendant to work

cooperatively to correct those errors.⁵

Third, we agree with the comments of the Florida Bar Criminal Rules Committee and others that in addition to amending Rule of Appellate Procedure 9.140(b)(5), concerning the withdrawal of trial counsel, rule 3.111(e) should also be amended so that the two rules remain in conformity. Thus, we have included an amendment to that rule in this opinion.

In conclusion, the primary goal of these amendments is to ensure that sentencing errors will be corrected at the earliest possible opportunity by the trial court. If the amendment fulfills this goal, the ultimate result will be an overall conservation of judicial resources without sacrificing the rights of defendants to receive a proper and lawful sentence. In addition, these amendments will help preserve the public trust and confidence in the judicial process that might be undermined if defendants are not provided with a meaningful mechanism in which to correct and preserve for appellate review sentencing errors. If unanticipated problems arise as a result of these amendments, we request that the CARA Committee, which is currently working on other rule changes as well as other ways to enhance the reliability of the sentencing process, bring these

⁵If the justice of the individual case requires it due to circumstances such as a short sentence, a joint motion by the parties requesting relinquishment of jurisdiction to the trial court for the limited purpose of correcting an illegal sentence may be appropriate.

problems to the Court's attention.

Accordingly, the amendments set forth in the appendix shall become effective immediately and shall also apply to cases pending on appeal. New language is underlined, and deleted language is shown in struck-through type.

It is so ordered.

HARDING, C.J., and SHAW, ANSTEAD and LEWIS, JJ., concur.

WELLS, J., concurs in part and dissents in part with an opinion.

QUINCE, J., concurs in part and dissents in part with an opinion.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

WELLS, J., concurring in part and dissenting in part.

I concur in the adoption of the rule as proposed by the Criminal Appeal Reform Act Committee chaired by Judge Altenbernd. However, I would adopt the rule exactly as proposed by the Committee. I would only add the following comment to Florida Rule of Criminal Procedure 3.800:

This amendment is not intended to alter the substantive law of the State concerning whether a change to the defendant's sentence violates the constitutional prohibition against double jeopardy.

I believe that the substance of the rule, though, should be adopted as proposed. I also note that the courts must be diligent in requiring the motions to be good-faith

allegations of sentencing error and not simply used as a tool to obtain extensions of time for filing of appellate briefs.

QUINCE, J., concurring in part and dissenting in part.

I agree with the majority that Florida Rule of Criminal Procedure 3.111(e), Florida Rule of Criminal Procedure 3.800(b), Florida Rule of Appellate Procedure 9.010(h), Florida Rule of Appellate Procedure 9.140, and Florida Rule of Appellate Procedure 9.600 should be amended as outlined above. However, I cannot agree with the majority's decision to amend Florida Rule of Criminal Procedure 3.800(a).

Rule 3.800(a), in one form or another, has been a part of Florida's criminal jurisprudence since 1968; the original rule was adopted March 1, 1967, to become effective on January 1, 1968. The rule was originally Florida Rule of Criminal Procedure 1.800(a) and provided as follows:

(a) A court may at any time correct an illegal sentence imposed by it.

The present version of the rule contains the same language with an addition involving scoresheet calculations.⁶ The bench, bar, and defendants have operated

⁶ Florida Rule of Criminal Procedure 3.800(a) presently provides:

for thirty-two years under a rule which allows the filing of a motion to correct an illegal sentence at any time. The reason for the rule, that a defendant should not have to serve even one day more than his or her legal sentence, is as valid today as it was when the rule was formulated. See Gonzalez v. State, 392 So. 2d 334 (Fla. 3d DCA 1981).

The majority has posited no reason to deviate from this long-standing procedure. No good reason has been advanced to require a defendant to either wait until his or her direct appeal has concluded or follow a new procedure during the short period between the filing of the appellate briefs and the determination of the case. The procedure suggested by the majority of relinquishing jurisdiction to file a motion would only delay the process for that limited number of cases which would fall in the category of needing immediate resolution.

For these reasons I dissent from the majority's decision to amend rule 3.800(a) to eliminate the filing of a motion during the pendency of an appeal.

(a) Correction. A court may at any time correct an illegal sentence imposed by it or an incorrect calculation made by it in a sentencing guideline scoresheet.

Original Proceeding - Florida Rules of Criminal Procedure and Appellate Procedure

Honorable Chris W. Altenbernd, Chair, The Criminal Appeal Reform Act Committee, Second District Court of Appeal, Tampa, Florida; Jerome C. Latimer, Chair, St. Petersburg, Florida, Robert R. Wills, immediate Past-Chair, Fort Lauderdale, Florida, and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida on behalf of The Florida Bar Criminal Procedure Rules Committee; Susan W. Fox, Chair, of MacFarlane, Ferguson & McMullen, Tampa, Florida, and Deborah K. Brueckheimer, Vice-Chair, Assistant Public Defender, Bartow, Florida, on behalf of The Florida Bar Appellate Court Rules Committee; and Nancy A. Daniels, Public Defender, and Paula S. Saunders, Assistant Public Defender, Tallahassee, Florida, on behalf of the Public Defender, Second Judicial Circuit;

for Petitioner

Bennett H. Brummer, Public Defender, and Andrew Stanton, Assistant Public Defender, Miami, Florida, on behalf of the Public Defender, Eleventh Judicial Circuit; and Blaise Trettis, Executive Assistant Public Defender, Melbourne, Florida,

Responding

APPENDIX

Rule 3.111. Providing Counsel to Indigents

[No changes to subdivisions (a) through (d).]

(e) **Withdrawal of Defense Counsel After Judgment and Sentence.** The attorney of record for a defendant in a criminal proceeding shall not be relieved of any duties, nor be permitted to withdraw as counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until after:

- (1) the filing of:
 - (A) a notice of appeal;
 - (B) a statement of judicial acts to be reviewed, if a transcript will require the expenditure of public funds;
 - (C) directions to the clerk, if necessary; and
 - (D) a designation of that portion of the reporter's transcript that supports the statement of judicial acts to be reviewed, if a transcript will require expenditure of public funds; or
- (2) the time has expired for filing of a notice of appeal, and no such notice has been filed.

Orders allowing withdrawal of counsel are conditional and counsel shall remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error the lower tribunal is authorized to address during the pendency of the direct appeal pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

Rule 3.800. Correction, Reduction, and Modification of Sentences

(a) **Correction.** A court may at any time correct an illegal sentence imposed by it or an incorrect calculation made by it in a sentencing ~~guideline~~ scoresheet, provided that a party may not file a motion to correct an illegal sentence pursuant to this subdivision during the time allowed for the filing of a motion pursuant to subdivision (b)(1) or during the pendency of a direct appeal.

(b) **Motion to Correct Sentencing Error.** ~~A defendant may file a motion to correct the sentence or order of probation within thirty days after the rendition of the sentence.~~ A motion to correct any sentencing error, including an illegal

sentence, may be filed as allowed by this subdivision. The motion must identify the error with specificity and provide a proposed correction. A response to the motion may be filed within 15 days either admitting or contesting the alleged error. Motions may be filed by the State pursuant to this subdivision only if the correction of the sentencing error would benefit the defendant.

(1) *Motion Prior to Appeal.* During the time allowed for the filing of a notice of appeal of a sentence, a defendant or the State may file a motion to correct a sentencing error.

(A) This motion shall stay rendition pursuant to Florida Rule of Appellate Procedure 9.020(h).

(B) Unless the trial court determines that the motion can be resolved as a matter of law without a hearing, it shall hold a calendar call no later than 20 days from the filing of the motion, with notice to all parties, for the express purposes of either ruling on the motion or determining the need for an evidentiary hearing. If an evidentiary hearing is needed, it shall be set no more than 20 days from the date of the calendar call. Within 60 days from the filing of the motion, the trial court shall file an order ruling on the motion. If no order is filed within 60 days, the motion shall be deemed denied.

(2) *Motion Pending Appeal.* If an appeal is pending, a defendant or the State may file in the trial court a motion to correct a sentencing error. The motion may be filed by appellate counsel and must be served before the party's first brief is served. A notice of pending motion to correct sentencing error shall be filed in the appellate court, which notice shall automatically extend the time for the filing of the brief until 10 days after the clerk of circuit court transmits the supplemental record pursuant to Florida Rule of Appellate Procedure 9.140(e)(6).

(A) The motion shall be served on the trial court and on all trial and appellate counsel of record. Unless the motion expressly states that appellate counsel will represent the movant in the trial court, trial counsel will represent the movant on the motion pursuant to Florida Rule of Appellate Procedure 9.140(b)(5). If the State is the movant, trial counsel will represent the defendant unless appellate counsel for the defendant notifies trial counsel and the trial court that he or she will represent the defendant on the State's motion.

(B) The trial court shall resolve this motion in accordance with the procedures in subdivision (b)(1)(B).

(C) Pursuant to Florida Rule of Appellate Procedure 9.140(e)(6), the clerk

of circuit court shall supplement the appellate record with the motion, the order, any amended sentence, and, if designated, a transcript of any additional portion of the proceedings.

(c) Reduction and Modification. A court may reduce or modify to include any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it within 60 days after such imposition, or within 60 days after receipt by the court of a mandate issued by the appellate court on affirmance of the judgment and/or sentence on an original appeal, or within 60 days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, then within 60 days after the highest state or federal court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, has entered an order of affirmance or an order dismissing the appeal and/or denying certiorari. This subdivision of the rule shall not, however, be applicable to those cases in which the death sentence is imposed or those cases in which the trial judge has imposed the minimum mandatory sentence or has no sentencing discretion.

Court Commentary

Rule 3.800(b) was substantially rewritten to accomplish the goals of the Criminal Appeal Reform Act of 1996 (Ch. 96-248, Laws of Fla.). As revised, this rule permits the filing of a motion during the initial stages of an appeal. A motion pursuant to this rule is needed only if the sentencing error has not been adequately preserved for review at an earlier time in the trial court. The State may file a motion to correct a sentencing error pursuant to rule 3.800(b) only if the correction of that error will benefit the defendant. This amendment is not intended to alter the substantive law of the State concerning whether a change to the defendant's sentence violates the constitutional prohibition against double jeopardy. See, e.g., Cheshire v. State, 568 So. 2d 908 (Fla. 1990); Goene v. State, 577 So. 2d 1306, 1309 (Fla. 1991); Troupe v. Rowe, 283 So. 2d 857, 859 (Fla. 1973). When a trial court determines that an evidentiary hearing is necessary to resolve a factual issue, it is possible that the court will need to utilize the entire 60-day period authorized by this rule. However, trial courts and counsel are strongly encouraged to cooperate to resolve these motions as expeditiously as possible because they delay the appellate process. For purposes of this rule, sentencing errors include harmful errors in orders entered as a result of the sentencing process. This includes errors in orders of probation, orders of community control, cost and restitution orders, as well as errors within the sentence itself.

Rule 9.020 Definitions

[No changes to subdivisions (a) through (g).]

(h) Rendition (of an Order). An order is rendered when a signed, written order is filed with the clerk of the lower tribunal. However, unless another applicable rule of procedure specifically provides to the contrary, if a final order has been entered and there has been filed in the lower tribunal an authorized and timely motion for new trial or rehearing, clarification, or certification; to alter or amend; for judgment notwithstanding verdict or in accordance with prior motion for directed verdict, or in arrest of judgment; to correct a sentence or order of probation pursuant to Florida Rule of Criminal Procedure 3.800(b)(1); to withdraw the plea after sentencing pursuant to Florida Rule of Criminal Procedure 3.170(l); or a challenge to the verdict, the following exceptions apply:

[No changes to subdivisions (h)(1) through (h)(3).]

Rule 9.140. Appeal Proceedings in Criminal Cases

[No changes to subdivision (a).]

(b) Appeals by Defendant.

[No changes to subdivisions (b)(1) through (b)(3).]

(4) *Cross-Appeal.* A defendant may cross-appeal by serving a notice within 10 days of service of the state's notice or service of an order on a motion pursuant to rule 3.800(b)(2). Review of cross-appeals before trial is limited to related issues resolved in the same order being appealed.

(5) *Withdrawal of Defense Counsel after Judgment and Sentence.* The attorney of record for a defendant in a criminal proceeding shall not be relieved of any professional duties, or be permitted to withdraw as counsel of record, except with approval of the lower tribunal on good cause shown on written motion, until after

(A) the following have been completed:

(i) The notice of appeal has been filed.

(ii) The statement of judicial acts to be reviewed has been filed, if a transcript will require the expenditure of public funds.

(iii) Directions to the clerk have been filed, if necessary.

(iv) A designation of that portion of the reporter's transcript necessary to support the statement of judicial acts to be reviewed has been filed, if a transcript will require expenditure of public funds.

(v) Substitute counsel has been obtained or appointed, or a statement has been filed with the appellate court that the appellant has exercised the right to self-representation. In publicly-funded cases, the public defender for the local circuit court shall initially be appointed until the record is

transmitted to the appellate court.

Or

(B) the time has expired for the filing of notice of appeal, and no such notice has been filed.

Orders allowing withdrawal of counsel are conditional and counsel shall remain of record for the limited purpose of representing the defendant in the lower tribunal regarding any sentencing error the lower tribunal is authorized to address during the pendency of the direct appeal pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

[No change to subdivision (b)(6).]

(c) Appeals by the State.

[No change to subdivisions (c)(1) through (c)(2).]

(3) *Commencement.* The state shall file the notice prescribed by rule 9.110(d) with the clerk of the lower tribunal within 15 days of rendition of the order to be reviewed; provided that in an appeal by the state under rule 9.140(c)(1) (I), the state's notice of cross-appeal shall be filed within 10 days of service of defendant's notice or service of an order on a motion pursuant to rule 3.800(b)(2). Copies shall be served on the defendant and the attorney of record. An appeal by the state shall stay further proceedings in the lower tribunal only by order of the lower tribunal.

[No change to subdivision (d).]

(e) Record.

[No changes to subdivisions (e)(1) through (e)(5).]

(6) Supplemental Record for Motion to Correct Sentencing Error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

(A) The clerk of circuit court shall automatically supplement the appellate record with any motion pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), any response, any resulting order, and any amended sentence. The clerk shall transmit the supplement to the appellate court within 5 days of the filing of the order ruling on the motion. If an order is not filed within 60 days from the filing of the motion, this time shall run from the expiration of the 60 day period, and the clerk shall supplement the record with the motion and a statement that no order was timely filed.

(B) If any appellate counsel determines that a transcript of a proceeding relating to such a motion is required to review the sentencing issue, appellate counsel shall, within 5 days from the transmittal of the supplement described in

subdivision (A), designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record. A copy of the designation shall be filed with the appellate court. The procedure for this supplementation shall be in accordance with Florida Rule of Appellate Procedure 9.140(e), except that counsel is not required to file a revised statement of judicial acts to be reviewed, the court reporter shall deliver the transcript within 15 days, and the clerk shall supplement the record with the transcript within 5 days of its receipt.

Rule 9.600 Jurisdiction of Lower Tribunal Pending Review

[No change to subdivisions (a) through (c).]

(d) Criminal Cases. The lower tribunal shall retain jurisdiction to consider motions pursuant to Florida Rules of Criminal Procedure 3.800(a)(b)(2) and in conjunction with post-trial release pursuant to rule 9.140(g). ~~While an appeal is pending, the movant under rule 3.800(a) shall within 10 days of the date of any order granting relief under that rule file a copy of the order with the court.~~