

Third District Court of Appeal

State of Florida

Opinion filed October 19, 2016.

No. 3D15-1638
Lower Tribunal Nos. 04-33223B, 03-8047 & 03-5454

Miguel Benitez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jorge Rodriguez-Chomat, Judge.

Miguel Benitez, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before WELLS, ROTHENBERG and SCALES, JJ.

PER CURIAM.

On Motion to Withdraw Mandate

On November 19, 2004, Appellant Miguel Benitez was charged with two counts of aggravated battery. Following Benitez's plea of guilty, Benitez was adjudicated guilty and sentenced to 366 days of imprisonment followed by three years of probation. Benitez subsequently violated his probation. On December 2, 2008, following a revocation of probation hearing, Benitez was sentenced to a total of fifteen years in prison on both counts.

On April 30, 2015, Benitez filed a pro se motion pursuant to rule 3.800(a) of the Florida Rules of Criminal Procedure alleging that his sentence was illegal. The trial court summarily denied Benitez's motion and Benitez timely appealed the trial court's denial. On August 26, 2015, this Court issued its per curiam affirmance of the trial court's order and our mandate issued on September 25, 2015.

After our affirmance opinion was issued, but prior to the issuance of the mandate, Benitez untimely filed his initial brief with this Court.¹ Benitez then filed several notices of inquiry and letters to this Court which we treat, collectively, as Benitez's motion to withdraw our September 25, 2015 mandate. We grant Benitez's motion to withdraw our mandate. Next, we treat Benitez's untimely

¹ While an appellant appealing a trial court's summary denial of a rule 3.800(a) motion need not file an initial brief, if an appellant chooses to file an initial brief, the brief must be filed within thirty days of the filing of the notice of appeal. Fla. R. App. P. 9.141(b)(2)(C)(i).

initial brief as a motion for rehearing of our August 26, 2015 affirmance, which we deny.

We direct the Clerk of this Court to issue a new mandate.