

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed July 27, 2016.  
Not final until disposition of timely filed motion for rehearing.

---

No. 3D16-1316  
Lower Tribunal No. 14-21872

---

**Clineford Jeune,**  
Petitioner,

vs.

**The State of Florida,**  
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Dennis J. Murphy, Judge.

Clineford Jeune, in proper person.

Pamela Jo Bondi, Attorney General, for respondent.

Before SUAREZ, C.J., and ROTHENBERG, and FERNANDEZ, JJ.

FERNANDEZ, J.

Clineford Jeune appeals the trial court's order denying his motion to mitigate sentence as untimely. An order denying a motion to mitigate sentence is not an appealable order; however, we treat the notice of appeal as a petition for a writ of certiorari and grant the petition because the trial court incorrectly determined that the motion was untimely. See Diaz v. State, 931 So. 2d 1002 (Fla. 3d DCA 2006).

On November 5, 2015, Jeune was sentenced to five years in state prison on a probation violation. The sentence was appealed and a mandate affirming was entered on April 12, 2016. Florida Rule of Criminal Procedure 3.800(c) permits the filing of a motion to mitigate sentence and requires that the motion be filed within sixty days of the entry of the sentence, or within sixty days from the date that the sentence becomes final by the issuance of an appellate mandate. Jeune filed his motion on April 24, 2016; therefore, his motion is timely and he was entitled to consideration of the motion on the merits.

Order quashed and cause remanded.