

Third District Court of Appeal

State of Florida

Opinion filed November 17, 2021.
Not final until disposition of timely filed motion for rehearing.

No. 3D21-1959
Lower Tribunal Nos. F19-4950, F19-4952, F18-18896, F18-22274, F19-4953, F19-4951, F19-5181, F19-7351, F19-13087

Bill Stroud,
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, Marlene Fernandez-Karavetsos, Judge.

Bill Stroud, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, LINDSEY and GORDO, JJ.

EMAS, J.

Bill Stroud appeals from the trial court's order denying his motion to mitigate sentence, filed pursuant to Florida Rule of Criminal Procedure 3.800(c).¹ The trial court, in the exercise of its discretion, denied the motion on its merits.

While an order dismissing or denying a motion to mitigate as untimely may, under limited circumstances, be subject to review by a petition for writ of certiorari, see, e.g., Iglesias v. State, 76 So. 3d 370 (Fla. 3d DCA 2011); Graham v. State, 845 So. 2d 1016 (Fla. 3d DCA 2003), an order denying a motion to mitigate on its merits is not appealable. Taylor v. State, 126 So.

¹ That rule provides in pertinent part:

A court may reduce or modify to include any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it, sua sponte, or upon motion filed, within 60 days after the 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, 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. If review is upon motion, the trial court shall have 90 days from the date the motion is filed or such time as agreed by the parties or as extended by the trial court to enter an order ruling on the motion.

3d 310 (Fla. 3d DCA 2013); Berki v. State, 298 So. 3d 1169 (Fla. 3d DCA 2020); Smith v. State, 902 So. 2d 293 (Fla. 3d DCA 2005); Royal v. State, 736 So. 2d 157 (Fla. 3d DCA 1999).

Appeal dismissed.