

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER _____

IN RE: AMENDMENT TO FLORIDA RULES
OF CRIMINAL PROCEDURE AND FLORIDA
RULES OF APPELLATE PROCEDURE

**EMERGENCY PETITION TO AMEND
FLORIDA RULE OF CRIMINAL PROCEDURE 3.800 AND
FLORIDA RULES OF APPELLATE PROCEDURE 9.010(h), 9.140, AND 9.600**

Chris W. Altenbernd, as Chair of the Criminal Appeal Reform Act Committee, respectfully petitions this Honorable Court for expedited review of proposed amendments to Florida Rule of Criminal Procedure 3.800 and Florida Rules of Appellate Procedure 9.010(h), 9.140, and 9.600. As grounds for these proposed amendments, the Committee states as follows:

1. This Committee was created by Chief Justice Major B. Harding in December 1998 to consider amendments to the rules of procedure to better address the Criminal Appeal Reform Act of 1996, Chapter 96-248, Laws of Florida, hereinafter ("the Act"). The other members of this Committee are Judge Michael E. Allen, Judge Michael Chavies, Judge

O.H. Eaton, Judge Michael A. Genden, Judge Nelly Khouzam, and Judge Stan R. Morris. This small committee of judges was created because the Court perceived a pressing need to address issues involving procedural rules that are normally monitored by several larger committees. The Committee was urged to expedite its deliberations but to elicit input from the other committees and from attorneys with expertise in this field.

2. This Committee held its first meeting on January 22, 1999, in Miami, Florida, at the mid-year meeting of The Florida Bar. At this meeting, the Committee discussed many possible procedural changes that might help both the trial courts and the appellate courts implement the Act. The Committee concluded that it would be most productive to examine (1) revisions to Rule 3.800(b); (2) revisions to Rules 3.800(a) and 3.850; (3) the use of standardized, computer-generated sentencing documents that the trial court could prepare and serve on the defendant at the sentencing hearing after the oral pronouncement of sentence; (4) the use of standardized written plea agreements; and (5) revisions to the rules relating to notices of appeal in criminal cases. The Committee decided that the revision of Rule 3.800(b) should be its first priority.

3. Subsequent to this meeting, Judge Allen and the Chair drafted several possible amendments to replace existing Rule 3.800(b). Two members of the Criminal Law Subcommittee of the Florida Bar Appellate Court Rules Committee, Robert J. Krauss and Deborah K. Brueckheimer, were provided with copies of the draft material in February, and both provided useful critiques.

4. The Committee was aware that the Criminal Law Subcommittee of the Florida Bar Appellate Court Rules Committee had submitted a related proposal to the Court in 1996. That proposal would have granted district courts the power to relinquish jurisdiction to trial courts in order to obtain rulings on unpreserved sentencing errors. This Court rejected that proposal when adopting Rule 3.800(b).

5. Because of her participation in the 1996 proposal and her expertise in this field, the Chair and Judge Allen met with Nancy Daniels, the Public Defender for the Second Judicial Circuit, on March 4, 1999. At that meeting, the participants 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.

6. As a result of these efforts, a tentative written proposal was distributed to the Committee on March 9, 1999.

7. The Committee held a second meeting on March 26, 1999, in Tampa, Florida, at the offices of The Florida Bar. In addition to the members of the Committee, this meeting was attended by Marty E. Moore, Carolyn M. Snurkowski, and Robert J. Krause of the Office of the Attorney General, and by Robert R. Wills, as Chair of the Florida Bar Criminal Procedure Rules Committee. Deborah K. Brueckheimer did not attend the meeting, but provided additional input. At the meeting, many revisions to the tentative proposal were suggested.

8. Following the March meeting, a revised proposal containing amendments to Rules 3.800(a) and (b), as well as changes in other rules necessary to accommodate these changes, was distributed on March 31, 1999, to the committee members and participating attorneys. The Committee members recommended that the Court implement this

proposal, including an amendment to Florida Rule of Appellate Procedure 9.140(e). A few minor changes were suggested at that time. By late April, the Committee was prepared to submit a final proposal to this Court.

9. Several cases involving the Act were scheduled for oral argument before the Court during the week of May 10, 1999. The Chair concluded that it would be more prudent to submit a memorandum containing the final draft proposal both to this Court and to the attorneys participating in those arguments in hopes that those attorneys might provide some final input to the Committee prior to the submission of this emergency petition. The Chair submitted that memorandum on May 5, 1999. This petition contains a provision allowing a cross-appeal by the defendant, and a small relocation of the portion of Rule 9.140(b)(5), addressing orders of withdrawal of defense counsel, as a result of this final input.

10. Accordingly, the Committee with no opposition from any of its members submits to this Court proposed amendments, which are attached hereto as Exhibit "A." These amendments significantly revise Rule 3.800(b), and amend several other rules to accommodate these new procedures.

11. In the future, the Committee intends to consider additional changes as identified in paragraph 2 of this petition.

WHEREFORE, the undersigned respectfully requests this Court's favorable consideration of the attached amendments.

Respectfully submitted on June ____, 1999.

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APPENDIX 'A'

Florida Rule of Criminal Procedure 3.800

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 subsection during the time allowed for the filing of a motion pursuant to subsection (b)(1) or during the pendency of a direct appeal.

(b) **Motion to Correct Sentencing Error.** A motion to correct any sentencing error, including an illegal sentence, may be filed as allowed by this subsection. 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.

(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 subsection 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.

[Rule 3.800(c) is not affected by these changes.]

Court Commentary

1999 Amendments. 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. 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.

Florida Rule of Appellate Procedure 9.020(h).

[Amending the reference to 3.800(b) to state 3.800(b)(1)]

(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(f); or a challenge to the verdict, the following exceptions apply: *[subparagraphs (1) through (3) are not affected]*.

Florida Rule of Appellate Procedure 9.140(b)(4)

(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.

Florida Rule of Appellate Procedure 9.140(b)(5)

(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:
[subparagraphs (i) through (v) are not affected].

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).

Florida Rule of Appellate Procedure 9.140(c)(3)

(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.

Florida Rule of Appellate Procedure 9.140(e)(6).

(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 subsection (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.

Florida Rule of Appellate Procedure 9.600(d)

The lower tribunal shall retain jurisdiction to consider motions pursuant to Florida Rules of Criminal Procedure 3.800(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.~~