

IN THE SUPREME COURT OF THE STATE OF FLORIDA

TRAVIS TERRELL DAVIS,

Petitioner,

CASE NO. SC04-568

v.

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KELLIE A. NIELAN
BUREAU CHIEF
Fla. Bar #618550

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Boulevard, 5th Floor
Daytona Beach, FL 32118
(386) 238-4990
Fax (386)238-4997

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

WHETHER AN EXTENSION OF TIME IS
AUTHORIZED BY FLORIDA RULE OF CRIMINAL
PROCEDURE 3.050 FOR A RULE 3.800(b)(2)
MOTION? 3

CONCLUSION 8

CERTIFICATE OF SERVICE 9

CERTIFICATE OF COMPLIANCE 9

TABLE OF AUTHORITIES

CASES:

Abreu v. State,
660 So. 2d 703 (Fla. 1995) 3, 4, 5, 6

Davis v. State,
686 So. 2d 647 (Fla. 5th DCA 2004) 1, 3, 6

Davis v. State,
745 So. 2d 499 (Fla. 1st DCA 1999) 6

McGuire v. State,
779 So. 2d 571 (Fla. 2nd DCA 2001) 1, 5, 6

Moses v. State,
844 So. 2d 686 (Fla. 4th DCA),
rev. denied, 858 So. 2d 331 (Fla. 2003) 1, 5, 6

Moya v. State,
668 So. 2d 279 (Fla. 2nd DCA 1996) 6

State v. Boyd,
846 So. 2d 458 (Fla. 2003) 4, 5, 6

Timmer v. State,
840 So. 2d 1160 (Fla. 5th DCA 2003) 6

OTHER AUTHORITIES:

Fla.R.Crim.P. 3.050 2, 3, 4, 5, 6

Fla.R.Crim.P. 3.800 2, 3

Fla.R.Crim.P. 3.800(b) 2, 3, 4, 6

Fla.R.Crim.P. 3.800(b)(2) 1, 2, 3, 5

Fla.R.Crim.P. 3.800(c) 3, 4, 6

Fla.R.Crim.P. 3.850 2, 4, 6

STATEMENT OF THE CASE AND FACTS

On January 5, 2004, Appellant timely filed a Motion to Correct Sentencing Error, pursuant to rule 3.800(b)(2). The trial court scheduled a hearing on the motion for February 25, 2004, but the hearing was not held because Appellant had not been transported to Seminole County from the Department of Corrections. The trial court rescheduled the hearing to March 24, 2004, in order to secure Appellant's presence. However, the new hearing date is outside the 60-day window within which the trial court must rule on the motion. Implicit in the trial court's order, therefore, was an extension of time for the court to hear and rule on the motion. Nevertheless, out of caution, Appellant filed the instant motion with this court seeking an extension of the 60-day time limit.

Davis v. State, 686 So. 2d 647, 648 (Fla. 5th DCA 2004). The Fifth District held that extensions of time are not permitted for a rule 3.800(b)(2) motion to correct sentence. *Davis*, at 649-650. The Fifth District acknowledged that its decision was contrary to the decisions in *Moses v. State*, 844 So. 2d 686 (Fla. 4th DCA), *rev. denied*, 858 So. 2d 331 (Fla. 2003), and *McGuire v. State*, 779 So. 2d 571 (Fla. 2nd DCA 2001). *Davis*, at 648-649.

SUMMARY OF ARGUMENT

In the decision under review, the Fifth District held that extensions of time are not permitted for a rule 3.800(b)(2) motion to correct sentence. This holding was reached based on the fact that the rule is silent as to extensions of time. The Fifth District was correct in that on its face rule 3.800(b) does not allow for extensions of time. However, respondent submits that a review of the case law indicates that extensions are and should be permitted on rule 3.800(b) motions when they are filed prior to the expiration of the sixty day time limit and where the party seeking the extension can establish good cause for the extension. This court has previously determined that rule 3.050 does, in fact, allow for extensions of time on rule 3.800 motions and on rule 3.850 motions. Rule 3.050 applies to all of the rules of criminal procedure except those deadlines specifically excepted in rule 3.050. Rule 3.800(b) and its time limits are not excepted under rule 3.050 and a rule 3.800(b) motion does not fall within any of the exceptions.

ARGUMENT

WHETHER AN EXTENSION OF TIME IS AUTHORIZED BY FLORIDA RULE OF CRIMINAL PROCEDURE 3.050 FOR A RULE 3.800(b)(2) MOTION?

In *Davis*, 868 So. 2d 647, the Fifth District held that extensions of time are not permitted for a rule 3.800(b)(2) motion to correct sentence. This holding was reached based on the fact that the rule is silent as to extensions of time. *Davis, supra*. The Fifth District is correct in that on its face rule 3.800(b) does not allow for extensions of time. However, respondent submits that a review of the case law indicates that extensions are and should be permitted on rule 3.800(b) motions when they are filed prior to the expiration of the sixty day time limit and where the party seeking the extension can establish good cause for the extension.

In *Abreu v. State*, 660 So. 2d 703, 705 (Fla. 1995), this court previously addressed this issue and determined that rule 3.050 does, in fact, allow for extensions of time on rule 3.800 motions. This Court ruled that the sixty day period of former rule 3.800(b), current rule 3.800(c), may be extended pursuant to rule 3.050, provided that “the matter is resolved within a reasonable time.” In reaching that conclusion, this Court stated:

The Florida Rules of Criminal Procedure are designed to promote justice and equity while also allowing

for the efficient operation of the judicial system. We see no reason why the provisions of rule 3.050 should not be applied to rule 3.800.

Abreu, at 704-705.

While *Abreu* concerned what is now 3.800(c),¹ there is no reason the same reasoning cannot be applied to current rule 3.800(b). Such an application and determination is further supported by this Court's recent decision in *State v. Boyd*, 846 So. 2d 458 (Fla. 2003).

In *Boyd*, this Court addressed the issue of whether rule 3.050 could be used to obtain an extension of time of the two year time limit of rule 3.850. This Court found “that the plain language of rule 3.050 allows for extensions of . . . time for filing postconviction motions[.]” *Boyd*, at 460. “Rule 3.050 expressly authorizes extensions of all time limitations imposed by ‘these rules’ – i.e., the Florida Rules of Criminal Procedure.” *Boyd*, at 460. While rule 3.050 excepts certain types of deadlines, it does not except the time requirement of rule 3.850. *Id.* This Court went on to state that in order to be entitled to additional time under rule 3.050 a defendant must establish “good cause” in order to receive “a short period of extra time to file the

¹Like rule 3.800(b), rules 3.800(c) and 3.850 do not have provisions authorizing extensions of time, but this Court has determined that rule 3.050 allows for extensions under those rules.

motion[.]” *Id.*

Respondent asserts that pursuant to *Boyd* and *Abreu*, rule 3.050 is available for seeking an extension of time under rule 3.800(b)(2) provided that the motion is filed prior to the running of the sixty day time limit and provided that the party seeking the extension of time is able to establish good cause for the extension. As the court in *Moses*, 844 So. 2d 686, stated:

. . . [Rule 3.800(b)] was designed to provide parties with an opportunity to correct sentencing errors in the trial court without the need to pursue the more costly and time-consuming appellate process. Its time limitation was designed too insure that such motion receive prompt attention. Even though the rule does not contain a provision which expressly authorizes extensions, it also does not prohibit them. As long as the trial court extends the time for good cause within the requisite sixty (60) days, we see no reason to restrict the court from correcting its own error.

Id., at 687. *See also McGuire*, 779 So. 2d at 572 (“This rule is intended to give the parties a meaningful opportunity to correct sentencing errors in the trial court rather than in the appellate court.”).

In this case, the rule 3.800(b)(2) motion was timely filed. The hearing was continued for approximately a month because Davis had not been transported to Seminole County for the hearing and in order to obtain Davis’s presence at the later scheduled hearing. The date set was beyond the sixty days. Davis filed his motion

for extension of time with the appellate court prior to the expiration of the sixty day time limit. The appellate court did not address whether Davis established good cause for the extension, but, as set forth above, determined that extensions of time are not permitted to be filed on rule 3.800(b) motions. Respondent submits that such ruling was wrong in light of *Abreu*, *Boyd*, *Moses* and *McGuire*.

Finally, as Davis states in his brief, one way for this Court to resolve this issue is to amend rule 3.800(b) to specifically allow for extensions of time. However, it should be noted that the decision in *Abreu* issued in 1995 and the rule was never amended to specifically allow for extensions of time on rule 3.800(c) motions, but such extensions are recognized. *See Davis v. State*, 745 So. 2d 499 (Fla. 1st DCA 1999); *Timmer v. State*, 840 So. 2d 1160 (Fla. 5th DCA 2003); *Moya v. State*, 668 So. 2d 279 (Fla. 2nd DCA 1996). Likewise, *Boyd* was decided more than a year ago and rule 3.850 has not been amended to specifically provide for the filing of an extension of time of the two year time limit. Thus, respondent submits that while amending the rule would be beneficial, it is not necessary. As this Court stated in *Boyd*, rule 3.050 applies to **all** of the rules of criminal procedure except those deadlines specifically excepted in rule 3.050. Rule 3.800(b) and its time limits are not excepted under rule 3.050 and a rule 3.800(b) motion does not fall within any of the exceptions, i.e., “the time for making a motion for new trial, for taking an appeal, or for making a motion for

a judgment of acquittal.” Fla.R.Crim.P. 3.050. The decision in *Davis* should be quashed.

CONCLUSION

Based on the arguments and authorities presented herein, the decision in *Davis* should be quashed and this case remanded for further proceedings consistent therewith.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KELLIE A. NIELAN
BUREAU CHIEF
Fla. Bar #618550

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990
Fax(386)238-4997

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Merit's Brief of Respondent has been furnished by delivery to Brynn Newton, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, FL 32114, this ____ day of May, 2004.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is 14-point, Times New Roman.

Bonnie Jean Parrish