

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MARVIN BACCHUS,

Petitioner

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D06-5272

STATE OF FLORIDA,

Respondent.

Opinion filed May 31, 2007.

Petition for Writ of Certiorari -- Original Jurisdiction.

Marvin Bacchus, pro se, Petitioner.

Bill McCollum, Attorney General, and Betty Cheramie, Assistant Attorney General,
Tallahassee, for Respondent.

PER CURIAM.

Petitioner seeks certiorari review of the trial court's denial of his motion for mitigation of sentence pursuant to Florida Rule of Criminal Procedure 3.800(c). The

trial court denied the Petitioner's motion on the mistaken belief that it no longer had jurisdiction to rule. Because the motion was filed within 60 days of the date that mandate issued in the Petitioner's direct appeal, the motion was timely. See Fla. R.Crim. P. 3.800(c). Therefore, the trial court had jurisdiction to consider petitioner's motion, and its failure to do so is a departure from the essential requirements of the law. Atkins v. State, 851 So. 2d 839 (Fla. 1st DCA 2003).

Accordingly, we grant the petition for writ of certiorari, vacate the order denying petitioner's rule 3.800(c) motion for lack of jurisdiction, and remand with directions to consider petitioner's motion on its merits.

BARFIELD, KAHN, and PADOVANO, JJ., CONCUR.