

**Third District Court of Appeal**  
**State of Florida, January Term, A.D. 2009**

Opinion filed May 13, 2009.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-91  
Lower Tribunal No. 03-20824

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**Jorge Guerrero,**  
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, Ellen Sue Venzer, Judge.

Jorge Guerrero, in proper person.

Bill McCollum, Attorney General, for appellee.

Before ROTHENBERG, LAGOA, and SALTER, JJ.

ROTHENBERG, J.

The defendant filed a motion to correct an illegal sentence pursuant to

Florida Rule of Criminal Procedure 3.800(a) on or about May 7, 2008. On October 7, 2008, he filed a motion to dismiss the May 7, 2008 motion to correct an illegal sentence. The trial court subsequently issued two orders: (1) an order dated November 13, 2008, which was filed on December 3, 2008, denying the defendant's motion to dismiss dated October 7, 2008; and (2) an order dated November 21, 2008, stating that defendant's motion to correct illegal sentence dated May 7, 2008, was withdrawn per defendant's request. Thus, the trial court entered conflicting orders—one denying the motion to dismiss and one granting the motion to dismiss.

In an abundance of caution, the defendant filed a notice of appeal and has sought clarification of the trial court's rulings. Because the trial court granted the defendant's motion to dismiss his May 7, 2008 motion to correct an illegal sentence on November 21, 2008, and subsequently entered an order denying his motion to dismiss on December 3, 2008, we treat the December 3, 2008 order as issued in error and a nullity.

Because the trial court granted the defendant's motion to dismiss the May 7, 2008 motion to correct an illegal sentence, we dismiss the instant appeal as moot. However, we note that defendant alleges that he filed a subsequent rule 3.800(a) motion to correct illegal sentence on or about October 23, 2008, that is still pending. The trial court is instructed to rule on the defendant's pending rule

3.800(a) motion, and if it cannot be located, to notify the defendant so that he can resubmit the motion.

Appeal dismissed.