

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

TARSIS LINHARES,

Appellant,

v.

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

CASE NO. 1D09-1672

STATE OF FLORIDA,

Appellee.

/

Opinion filed May 28, 2010.

An appeal from the Circuit Court for Duval County.

Charles W. Arnold, Judge.

Nancy A. Daniels, Public Defender, and Edgar Lee Elzie, Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Thomas H. Duffy, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

We dismiss this appeal for lack of jurisdiction. The notice of appeal filed on April 3, 2009, appealing the judgment and sentence, rendered on January 15, 2009,

and the order denying Appellant's 3.800(c) motion to reduce sentence, is untimely. Because the notice of appeal was filed more than 30 days after rendition of the order, this Court is without appellate jurisdiction. See Fla. R. App. P. 9.110(b). A motion to mitigate under rule 3.800(c) is discretionary with the court and is itself not appealable. See Riggs v. State, 847 So. 2d 1037, 1038 (Fla. 1st DCA 2003).

DISMISSED.

KAHN, ROWE, and MARSTILLER, JJ., CONCUR.