

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

CHRISTOPHER TANZLER,

Appellant,

v.

Case No. 5D08-2949

STATE OF FLORIDA,

Appellee.

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Opinion filed April 9, 2009

3.800 Appeal from the Circuit Court
for Seminole County,
Donna L. McIntosh, Judge.

James S. Purdy, Public Defender, and
Brynn Newton, Assistant Public Defender,
Daytona Beach, for Appellant.

Christopher M. Tanzler, Perry, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Kellie A. Nielan,
Assistant Attorney General, Daytona
Beach, for Respondent.

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TORPY, J.

In this direct appeal from his criminal conviction, Appellant filed a *pro se* Florida Rule of Criminal Procedure 3.800(b)(2) motion after we permitted him to file an initial brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), but before we permitted counsel to withdraw. Our Clerk, in reliance on *Rodriguez v. State*, 881 So. 2d 671 (Fla. 5th DCA 2004), ordered Appellant's counsel to show cause why Appellant's rule

3.800(b)(2) motion should not be stricken because it was not signed by counsel and not timely filed. Having considered Appellant's response, we permit Appellant to proceed. In doing so, we recede from our decision in *Rodriguez*.

Since we decided *Rodriguez*, two of our sister courts have expressed conflict. *Lopez v. State*, 905 So. 2d 1045 (Fla. 2d DCA 2005); *Proctor v. State*, 901 So. 2d 994 (Fla. 1st DCA 2005). We are persuaded by and adopt their reasoning.

PALMER, C.J., GRIFFIN, SAWAYA, ORFINGER, MONACO, LAWSON, EVANDER and COHEN, JJ., concur.