

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

JANUARY TERM 2009

BERNARD DOUGHERTY,

Appellant,

v.

Case No. 5D08-3034

STATE OF FLORIDA,

Appellee.

/

Opinion filed March 27, 2009

3.800 Appeal from the Circuit
Court for Brevard County,
David Dugan, Judge.

Bernard Dougherty, Sneads, Pro
Se.

Bill McCollum, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General, Daytona
Beach, for Appellee.

ORFINGER, J.

Bernard Dougherty appeals a trial court order partially denying his motion to correct sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). Mr. Dougherty's motion raised three claims. The trial court denied two of the claims with prejudice. With respect to the third claim, the trial court concluded it was legally insufficient and denied it without prejudice with leave to amend. No specific time was provided within which an amendment could be filed. The order then advised Mr.

Dougherty that he had thirty days to file an appeal. Because the order lacks finality, we dismiss for lack of jurisdiction. Howard v. State, 976 So. 2d 635, 636 (Fla. 5th DCA 2008). If leave to amend has been given by the trial court, a defendant may not appeal until an order denying the motion is entered without leave to amend. Id.

It appears that the trial court attempted to create a partial final judgment that allowed Mr. Dougherty to appeal some, but not all, of the grounds asserted, and also allowed an amended motion to be filed at some unspecified time in the future. The trial court should have stricken the legally insufficient claim with leave to amend within a specific, reasonable period of time, probably thirty days. Although the trial court was free to indicate in such a non-dispositive order that the other grounds would ultimately be denied without leave to amend, it should not have entered a partial final order. Lawrence v. State, 987 So. 2d 157, 158 (Fla. 2d DCA 2008). Informing Mr. Dougherty that he had a right to appeal the non-final order within thirty days of its rendition apparently confused him. It would have been preferable for the trial court to affirmatively inform Mr. Dougherty that such a non-final order is not yet appealable. Id.

For these reasons, we must dismiss this appeal. However, the trial court shall provide Mr. Dougherty a reasonable time to amend his motion. If he does not amend his motion, the court may enter a final order that disposes of all of Mr. Dougherty's claims on the merits. If he files an amendment, the court should consider that amendment and rule on it in an appropriate manner intended to result in a single final order.

APPEAL DISMISSED.

MONACO and COHEN, JJ., concur.