

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

JANUARY TERM 2009

JOE BOLDEN,

Appellant,

v.

CASE NO. 5D08-718

STATE OF FLORIDA,

Appellee.

/

Opinion filed June 5, 2009.

Appeal from the Circuit Court
for Orange County,
Alicia Latimore, Judge.

James S. Purdy, Public Defender, and
Thomas J. Lukashow, Assistant Public
Defender, Daytona Beach, for Appellant.

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

PER CURIAM.

The facts in this case are virtually identical to the facts in *Adams v. State*, 942 So. 2d 1024 (Fla. 4th DCA 2006). Nine days after the imposition of his sentence, Bolden moved to withdraw his plea. Five days later, and before the motion could be heard, Bolden filed a notice of appeal. The trial court erroneously ruled that it lacked jurisdiction to hear the motion. *Id.*; see also *Smith v. State*, 900 So. 2d 732, 733 (Fla.

4th DCA 2005) (recognizing that where timely motion to withdraw plea is pending when notice of appeal is filed, trial court still has jurisdiction to decide motion). Accordingly, we reverse for consideration of the motion to withdraw plea.

REVERSED.

GRIFFIN, TORPY and LAWSON, JJ., concur.