

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

OZZIE LEE ROBINSON,  
  
Appellant,

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

v.

CASE NO. 1D05-2634

STATE OF FLORIDA,  
  
Appellee.

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Opinion filed December 21, 2005.

An appeal from the Circuit Court for Alachua County.  
David A. Glant, Judge.

Appellant, pro se.

Charlie Crist, Attorney General; Daniel A. David, Assistant Attorney General,  
Tallahassee, for Appellee.

PER CURIAM.

The appellant challenges the trial court's summary denial of his postconviction motion attacking the legality of his sentence. Although filed pursuant to rule 3.850, we treat the appellant's untimely 3.850 motion as if it were filed pursuant to rule 3.800. See Valdes v. State, 765 So. 2d 774, 776 (Fla. 1st DCA 2000). The appellant claims his sentence is illegal because after he began

serving the 25-year sentence initially imposed, the trial court resentenced him to life imprisonment in violation of Ashley v. State, 850 So. 2d 1265 (Fla. 2003). The trial court asserts that the resentencing occurred to correct a scrivener's error. However, as the State concedes, the trial court did not attach record portions supporting its assertion. We accordingly reverse the trial court's summary denial of the appellant's motion and remand for the trial court to attach appropriate record portions, or if the claim cannot be discerned from the record, the trial court must so state. Koester v. State, 864 So. 2d 1282 (Fla. 1st DCA 2004).

REVERSED.

WEBSTER, BROWNING and POLSTON, JJ. CONCUR.