

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

CARNERI FRED SHINE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D11-5657

Opinion filed August 23, 2012.

An appeal from the Circuit Court for Nassau County.
Robert M. Foster, Judge.

Carneri Fred Shine, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Giselle D. Lysten, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

This is an appeal from an order denying a motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). The trial court's order denied the motion on the basis that it was procedurally barred. The order stated, in part:

The Court, being fully advised in the premises, finds that the defendant filed a notice of appeal from the original judgment and

sentence, two motions for post-conviction relief and a motion to correct sentencing error. This Court has denied all prior claims and the rulings have been upheld on appeal. Defendant is barred from re-litigating this claim.

Collateral estoppel bars a party from re-litigating an identical claim that has been previously decided on the merits. See State v. McBride, 848 So. 2d 287, 290 (Fla. 2003). Here, the order on appeal does not indicate whether Appellant's current Rule 3.800(a) motion raises claims identical to those previously litigated by Appellant or whether those prior claims were decided on the merits. Because the record* does not show conclusively that Appellant is entitled to no relief, we must reverse the order on appeal and remand for further proceedings. See Fla. R. App. P. 9.141(b)(2)(D); Pleasure v. State, 931 So. 2d 1000 (Fla. 3d DCA 2006).

Reversed and remanded for further proceedings.

DAVIS and RAY, JJ., CONCUR; THOMAS, J. DISSENTS WITH OPINION.

*The record on appeal is limited to "the motion, response, reply, order on the motion, motion for rehearing, response, reply, order on the motion for rehearing, and attachments to any of the foregoing, together with the certified copy of the notice of appeal." Fla. R. App. P. 9.141(b)(2)(A). As noted by the State, neither party is permitted to supplement the record on appeal with other documentation attempting to support or challenge the order denying relief.

THOMAS, J., DISSENTING.

I respectfully dissent. In my view, it is not necessary to remand to require the trial court to attach Appellant's previous motion to prove that it correctly denied the current motion on the basis of collateral estoppel. We should hold that it is Appellant's burden to attach his previous motion, as it the losing party's burden to demonstrate reversible error in the trial court's ruling, and the State is the prevailing party. Furthermore, the Florida Supreme Court has recently held that it is not the burden of this court, the trial court, or the State to *disprove* Appellant's stale claim filed under Florida Rule of Criminal Procedure 3.800, where he has failed to provide adequate documentation at trial to support his argument that his agreed-upon sentences are illegal. Johnson v. State, 60 So. 3d 1045, 1051 (Fla. 2011) ("The State has no obligation to refute a defendant's claim raised under rule 3.800(a). On the contrary, 'the burden [is on] the petitioner to demonstrate an entitlement to relief on the face of the record.'" (citation omitted)). Thus, I would not follow the rationale of the Third District in Pleasure v. State, 931 So. 2d 1000 (Fla. 3d DCA 2006).

A trial court's ruling is presumed correct. Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979). Although this principle is not always recognized in collateral cases, in my view it should be, as it is the controlling law. While I understand and recognize the rule regarding the trial

court's obligation to attach records to support summary denials in claims regarding ineffective assistance of counsel filed under Florida Rule of Criminal Procedure 3.850, that same principle is not binding on trial courts when summarily denying claims filed under Florida Rule of Criminal Procedure 3.800(a), as relief is available under this latter rule only where a defendant can show an entitlement to relief based on the records alone. I agree with the State that this court should not remand, where Appellant has failed to provide an adequate record establishing an entitlement to relief, which is his burden under section 924.33, Florida Statutes.

I would affirm the trial court's order on appeal.