

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2008*

**DON CIOETA,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-1372

[August 13, 2008]

PER CURIAM.

The order summarily denying appellant's Florida Rule of Criminal Procedure 3.850 motion is reversed and remanded for an evidentiary hearing on petitioner's claim that the Department of Correction's forfeiture of gain time has thwarted the intent of his negotiated plea agreement. *See Hunt v. State*, 922 So. 2d 452 (Fla. 4th DCA 2006); *Garvin v. State*, 884 So. 2d 470 (Fla. 4th DCA 2004). The trial court shall consider the appropriate remedy, specific performance or plea withdrawal, based on the circumstances of this case. *See Cruz v. State*, 976 So. 2d 695, 697 (Fla. 4th DCA 2008); *Spencer v. State*, 623 So. 2d 1211, 1213 (Fla. 4th DCA 1993); *Santobello v. New York*, 404 U.S. 257, 266-67 (1971) (Justice Douglas concurring specially). *See also Mehl v. State*, 958 So. 2d 465 (Fla. 4th DCA 2007); *Hunt*, 613 So. 2d at 898.

*Reversed and Remanded.*

WARNER, GROSS and DAMOORGIAN, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael G. Kaplan, Judge; L.T. Case No. 93-2501CF10A.

Don Cioeta, Miami, pro se.

No appearance required for appellee.

***Not final until disposition of timely filed motion for rehearing.***