

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

DERRICK GIBSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1905

[June 23, 2010]

PER CURIAM.

Appellant, Derrick Gibson, once again appeals a trial court order denying his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). This court reversed previous trial court orders summarily denying this same motion in *Gibson v. State*, 944 So. 2d 426 (Fla. 4th DCA 2006) and *Gibson v. State*, 967 So. 2d 410 (Fla. 4th DCA 2007).

This time, the trial court, after holding an evidentiary hearing and considering additional documentation, concluded in the order now being appealed that the exhibits presented by the state clearly indicated that Gibson's release from Department of Corrections's custody was within three years of his robbery charge, qualifying him for sentencing as a prison releasee reoffender. We have reviewed the order and its attachment of those documents and cannot agree. The state has not shown evidence to refute Gibson's claim that his last release was from temporary detention.

We, therefore, reverse and remand for the trial court to grant this motion and for the court to conduct resentencing consistent with this opinion. See *Tumblin v. State*, 965 So. 2d 354 (Fla. 4th DCA 2007).

Reversed and Remanded.

STEVENSON, HAZOURI and DAMOORGIAN, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Paul L. Backman, Judge; L.T. Case No. 98-9994 CF10B.

Carey Haughwout, Public Defender, David John McPherrin and Alan T. Lipson, Assistant Public Defenders, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.