

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

**KEVIN SMITH,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-341

[May 14, 2008]

PER CURIAM.

The appellant sought relief, pursuant to rule 3.800(a), for credits for time served in jail prior to sentencing. The lower court denied relief through a detailed order highlighting facts that rendered the motion without merit. However, the lower court failed to attach any records that substantiate the findings described in the order on appeal. As such, we are constrained to reverse the order on appeal and remand for the attachment of records that conclusively refute the motion, if such records exist. *See Collins v. State*, 805 So.2d 73 (Fla. 4th DCA 2002).

*Reversed and Remanded.*

SHAHOOD, C.J., and MAY, J., concur.  
WARNER, J., concurs specially with opinion.

WARNER, J., concurring specially.

I concur in the reversal for attachment of records to substantiate the trial court's order denying relief. However, I do so only because of the lengthy court-made precedent requiring this additional step in rule 3.800 proceedings.

Unlike rule 3.850(d), which requires the court to attach those portions of the record which conclusively refute a prisoner's allegations entitling him to postconviction relief, there is no comparable requirement in rule 3.800(a). The appellate record for appeal purposes includes "copies of 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).

This summary appellate record provision originally covered only rule 3.850 proceedings. In 1992, the prior rule was amended to include rule 3.800 appeals, and at that time the phrase “attachments to any of the foregoing” was added. *In re Amendments to Fla. Rules of Appellate Procedure*, 609 So. 2d 516, 546 (Fla. 1992). The committee notes reveal:

Subdivision (g) was amended to provide a specific procedure to be followed by the courts in considering appeals from summary denial of Florida Rule of Criminal Procedure 3.800(a) motions. Because such motions are in many respects comparable to Florida Rule of Criminal Procedure 3.850 motions, it was decided to use the available format already created by existing subdivision (g) of this rule. Because a Florida Rule of Criminal Procedure 3.800(a) motion does not have the same detailed requirements as does a Florida Rule of Criminal Procedure 3.850 motion, this subdivision also was amended to require the transmittal of *any attachments to the motions* in the lower court.

*Id.* at 549 (emphasis supplied). Thus, it is clear that nowhere in the rules is there a requirement that the trial court attach portions of the record which conclusively refute the prisoner’s claim for jail credit or to refute a claim of an illegal sentence.

Nevertheless, through a host of cases the district courts have imposed the requirement of attaching portions of the record justifying the order of denial, because without any attachments the courts have essentially no “record” from which to conduct a meaningful review of the trial court’s order. I point this out only as another reason why the rules of postconviction procedure and appellate procedure are desperately in need of review and revision to permit efficient as well as effective review of these claims.

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Appeal of order denying rule 3.800(a) motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jorge Labarga, Judge; L.T. Case No. 2003CF010527AXX.

Kevin Smith, Moore Haven, pro se.

Bill McCollum, Attorney General, Tallahassee, and Daniel P. Hyndman, Assistant Attorney General, West Palm Beach, for appellee.

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