

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

CARLOS JOSE CRUZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-158

[December 1, 2010]

PER CURIAM.

The order denying appellant's rule 3.850 motion is summarily reversed. *See, e.g., Terry v. State*, 970 So. 2d 863 (Fla. 4th DCA 2007); *Dieudonne v. State*, 958 So. 2d 516 (Fla. 4th DCA 2007); *Smith v. State*, 956 So. 2d 1266 (Fla. 4th DCA 2007). The trial court denied the motion based solely upon the state's response to a rule 3.800(a) motion to correct an illegal sentence. The response to a completely different motion and the records attached to that response do not address or refute the claims raised in appellant's rule 3.850 motion. This case is remanded for the trial court to follow the procedures set forth in rule 3.850(d) and *Spera v. State*, 971 So. 2d 754 (Fla. 2007).

Reversed and remanded.

POLEN, HAZOURI and LEVINE, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Sandra K. McSorley, Judge; L.T. Case No. 2002CF003803AXX.

Carlos Jose Cruz, Okeechobee, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.