

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed February 9, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-2989
Lower Tribunal No. 08-24570A

Gustavo Castillo,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Peter R. Lopez, Judge.

Gustavo Castillo, in proper person.

Pamela Jo Bondi, Attorney General for appellee.

Before GERSTEN, WELLS, and SUAREZ, JJ.

WELLS, Judge.

Gustavo Castillo appeals an order summarily denying his motion to correct an illegal sentence under Florida Rule of Criminal Procedure 3.800(a). On appeal

from a summary denial, this Court must reverse unless the postconviction record, see Fla. R App. P. 9.141(b)(2)(A), shows conclusively that the appellant is entitled to no relief. See Fla. R.App. P. 9.141(b)(2)(D).

The excerpt of the Rule 3.800 hearing transcripts provided to this Court reflect that the court below denied the instant motion as successive based upon a prior order denying the defendant's claim that he was improperly classified as a habitual felony offender. However, the lower court failed to attach to the instant order under review either Castillo's prior Rule 3.800 motion or the prior order denying the motion. Therefore, because the record now before us fails to make the required showing that the defendant is entitled to no relief, we reverse the order and remand for further proceedings. If the trial court again enters an order summarily denying the post-conviction motion, the court shall attach the record excerpts conclusively showing that the appellant is not entitled to any relief.

Reversed and remanded for further proceedings.