

Third District Court of Appeal

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

Opinion filed February 16, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-3276

Lower Tribunal No. 93-42993

Willie Thomas,
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, Roberto M. Pineiro, Judge.

Willie Thomas, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before WELLS, SHEPHERD, and SUAREZ, JJ.

WELLS, Judge.

Willie Thomas 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 trial court denied the instant motion upon finding that the defendant had raised the same claim in a prior Rule 3.800 motion and that the claim was previously denied. However, the lower court failed to attach Thomas' prior Rule 3.800 motion and the prior order denying the motion to the instant order under review. Because the record before us fails to make the required showing, we reverse the order on appeal and remand for an evidentiary hearing, or for the attachment of record excerpts conclusively showing that the appellant is not entitled to relief. See Fla. R. App. P. 9.141(b)(2)(D).

Reversed and remanded for further proceedings.