

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2005

HORACE JONES CARROLL,

**

Appellant,

**

CASE NO. 3D04-3268

vs.

**

THE STATE OF FLORIDA,

**

LOWER TRIBUNAL

Appellee.

**

CASE NOS. F87-11792

F93-1913, F93-6583

Opinion filed August 24, 2005.

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

Horace Jones Carroll, in proper person.

Charles J. Crist, Jr., Attorney General, and Lucretia A. Pitts, Assistant Attorney General, for appellee.

Before GERSTEN, GREEN, and FLETCHER, JJ.

FLETCHER, Judge.

Horace Jones Carroll seeks to reverse a trial court order denying relief pursuant to Florida Rule of Criminal Procedure 3.850. We reverse the order denying post-conviction relief and remand for further proceedings.

This is one of those circumstances where resolution of the substantive issue [credit for time served] requires examining transcripts of two untranscribed hearings. The defendant has requested immediate release pursuant to a mitigated sentence. As in Fulcher v. State, 875 So. 2d 647 (Fla. 3d DCA 2004), application of gain time and credit for time served to the mitigated sentence would produce the absurd result of immediate release, when it is clear that is not the result intended by the trial court. The state agrees that there remain issues of waiver and the need to determine the specific terms of the mitigated sentences. The state points out that review of the transcripts of the April 24, 2003 and May 1, 2003 hearings are necessary to determine the terms of the mitigated sentence.

As the trial court failed to attach the necessary transcripts, we reverse and remand for further proceedings, and to attach the documentation necessary to refute the defendant's claim.

Reversed and remanded.