

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2004

TRAVIS FAIRROW,

Appellant,

v.

CASE NO. 5D03-3893

STATE OF FLORIDA,

Appellee.

Opinion filed March 26, 2004

3.850 Appeal from the Circuit Court
for Lake County,
G. Richard Singeltary, Judge.

Travis Fairrow, East Palatka, *pro se*.

Charles J. Crist, Jr., Attorney General, Tallahassee,
and Rebecca Roark Wall, Assistant Attorney General,
Daytona Beach, for Appellee.

SHARP, W., J.

Fairrow appeals from the summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850. He raises two grounds which we find have no merit: newly discovered evidence; and ineffective assistance of trial counsel for having failed to investigate all of Fairrow's claimed witnesses and two claimed perpetrators.¹ However, the third ground Fairrow raises, that the trial court erred in stacking

¹ See *State v. Gunsby*, 670 So. 2d 920 (Fla. 1996); *Blanca v. State*, 830 So. 2d 260 (Fla. 5th DCA 2002); *Catis v. State*, 741 So. 2d 1140 (Fla. 4th DCA 1998), *rev. denied*, 735 So. 2d 1284 (Fla. 1999).

the ten year minimum mandatory term for his burglary conviction and the three year minimum mandatory terms for the three aggravated assault convictions, for a total of nineteen years, requires a reversal.

Case law has clarified that consecutive minimum mandatory terms under section 775.087, Florida Statutes, are not authorized in cases in which the sentences imposed are for offenses committed during a single criminal episode.² In ruling on Fairrow's motion, the trial court failed to attach any portions of the record which refutes this conclusion.

Accordingly, we affirm the trial court as to the first two grounds, but reverse and remand as to the third ground. The trial court may either correct the mandatory minimum sentences in such a manner that they do not run consecutively, or it may attach portions of the record showing that the offenses were not part of a single criminal episode.

AFFIRMED in part; REVERSED in part; REMANDED.

THOMPSON and MONACO, JJ., concur.

² See *Perreault v. State*, 853 So. 2d 604 (Fla. 5th DCA 2003); *Green v. State*, 845 So. 2d 895 (Fla. 3d DCA 2003); *Wilchcombe v. State*, 842 So. 2d 198 (Fla. 3d DCA 2003); *Cunningham v. State*, 838 So. 2d 627 (Fla. 5th DCA 2003).