

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1819

TYRONE POWELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Marianne L. Aho, Judge.

July 20, 2020

PER CURIAM.

Appellant makes two arguments challenging the trial court's denial of his motion to correct illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a). We affirm the first claim of a scoresheet error without comment. On the second claim, however, we reverse and remand for the trial court to either impose Appellant's mandatory minimum sentences concurrently, or to attach portions of the record conclusively refuting Appellant's entitlement to relief.

Appellant's motion claimed that his sentence was illegal because the trial court imposed consecutive mandatory minimum sentences when his crimes arose from the same criminal episode and did not involve the discharge of a firearm. *See Williams v.*

State, 186 So. 3d 989, 993 (Fla. 2016) (holding that “consecutive sentencing of mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and a firearm was merely possessed but not discharged”). The trial court ruled that Appellant’s argument was refuted by the record. But we cannot determine from the record portions attached that Appellant’s argument is conclusively refuted. The State’s response relies on transcripts provided in the appendix to its own brief in support of affirming Appellant’s sentence. But these transcripts are not included in the record on appeal. *See, e.g., Brown v. State*, 132 So. 3d 363, 364 (Fla. 1st DCA 2014) (“[W]here a defendant has stated a facially sufficient claim that is cognizable pursuant to rule 3.800(a), a trial court is required to attach records to an order of denial which conclusively refute his entitlement to relief.”). We thus reverse and remand for the trial court to either grant relief on Appellant’s claim, or to attach portions of the record conclusively refuting Appellant’s entitlement to relief.

AFFIRMED in part, REVERSED and REMANDED in part with directions.

OSTERHAUS, KELSEY, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Tyrone Powell, pro se, Appellant.

Ashley Moody, Attorney General, and Michael McDermott, Senior Assistant Attorney General, Tallahassee, for Appellee.