

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**MITCHELL STUKEL,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D18-600

[July 11, 2018]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Lawrence Michael Mirman, Judge; L.T. Case No. 43-1994-CF000906A.

Mitchell Stukel, South Bay, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

The circuit court treated appellant's rule 3.800(a) motion as a rule 3.850 motion and then dismissed it as untimely filed. The court erred in doing so because rule 3.800(a) is available to address an oral versus written sentencing disparity. *See Williams v. State*, 957 So. 2d 600 (Fla. 2007).

Affirmance without prejudice is nonetheless appropriate because appellant's motion failed to attach the sentencing hearing transcript, the portion of the record necessary to address the claim in his rule 3.800(a) motion. *See Zill v. State*, 162 So. 3d 83, 84 (Fla. 4th DCA 2014) (affirming denial of rule 3.800(a) motion claiming sentencing discrepancy without prejudice to appellant's right to refile motion with supporting documentation of transcript and written sentences); *see also Ayala-Laias v. State*, 16 So. 3d 244 (Fla. 4th DCA 2009).

We reject the state's argument that there was no sentencing disparity here because there is no difference in this case between a statutory "life" sentence and a "natural life" sentence. *See Holt v. State*, 82 So. 3d 898,

899 (Fla. 4th DCA 2011) (recognizing that a sentence to natural life did not conform to the statutory sentence of life in prison with a 25-year mandatory minimum).

On remand, if appellant refiles the rule 3.800(a) motion, he is also entitled to be heard on his claim of failure to consider a scoresheet. *See Paul v. State*, 735 So. 2d 572 (Fla. 3d DCA 1999).

Affirmed without prejudice to appellant's filing of an amended rule 3.800(a) motion.

GERBER, C.J., GROSS and FORST, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***