

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

JANUARY TERM 2005

**THOMAS MARTONE,**

Appellant,

v.

**STATE OF FLORIDA,**

Appellee.

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CASE NO. 4D03-494

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As a result of the failure of the trial court to render an order in accordance with our mandate, we deem that the record does not support grounds for a summary denial. We therefore enforce our mandate by ordering an evidentiary hearing on the eight issues.

STONE, WARNER and POLEN, JJ., concur.

***NOT FINAL UNTIL DISPOSITION OF ANY  
TIMELY FILED MOTION FOR REHEARING.***

Opinion filed January 26, 2005

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner and Eileen M. O'Connor, Judges; L.T. Case No. 97-14350 CF10.

Thomas Martone, Belle Glade, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Linda Harrison, Assistant Attorney General, West Palm Beach, for appellee.

**ON MOTION TO ENFORCE MANDATE**

PER CURIAM.

In February 2004, we reversed a summary denial of appellant's motion for postconviction relief as to claims one, five, six, seven, sixteen, twenty-one, twenty-three, and twenty-four. We remanded for the attachment of records conclusively refuting these claims or for an evidentiary hearing on the issues. In June 2004, the circuit court issued an order to the statewide prosecutor to respond to the mandate on the motion for postconviction relief. A response was filed by the statewide prosecutor, but the trial court has not ruled on the response, despite orders from this court requesting a ruling.