

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

PATRICK G. SWEENEY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-4205

[November 29, 2006]

PER CURIAM.

Under rule 3.800(a), Appellant challenges the minimum mandatory portion of his 1991 sentence for attempted murder of a law enforcement officer. The lower court dismissed the motion under the belief the issue had been litigated in various rule 3.850 motions or on direct appeal. The lower court failed to attach any document supporting this conclusion and our records reveal none. From the face of the record, Sweeney is not entitled to the relief he seeks. Thus the lower court should have denied relief on the merits and not dismissed the case as procedurally barred. Remand for such an order would be a waste of judicial resources and thus we choose to affirm on the merits. *See generally Richardson v. State*, 918 So.2d 999, 1004 (Fla. 5th DCA 2006) (refusing to remand where the trial court improperly denied a petition, where dismissal was the proper disposition).

GUNTHER, FARMER, and SHAHOOD, JJ., concur.

* * *

Appeal of order denying rule 3.800(a) motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael G. Kaplan, Judge; L.T. Case No. 91-18941 CF10.

Patrick G. Sweeney, Bushnell, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing.