

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

FRANCISCO GARCIA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-1359

[December 3, 2008]

PER CURIAM.

Francisco Garcia appeals the summary denial of his rule 3.850 motion. On appeal, as it did below, the state agrees that the sentences on counts II and III are illegal. Accordingly, we reverse and remand for resentencing on these counts.

We affirm the denial of the remaining claims. Regarding Garcia's third claim, we note that during the plea hearing, the trial court explained the two scenarios that would trigger mitigation of appellant's sentence pursuant to the plea agreement. Neither of these has occurred yet.

Affirmed in part, Reversed in part and Remanded.

SHAHOOD, C.J., KLEIN and TAYLOR, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Krista Marx, Judge; L.T. Case No. 2004CF13707AXX.

Francisco Garcia, Arcadia, pro se.

Bill McCollum, Attorney General, Tallahassee, and Melynda L. Melear, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.