

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

JAMES TURNER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-2464

[May 2, 2012]

PER CURIAM.

We reverse the order summarily denying appellant's motion for postconviction relief. Appellant's motion claimed that his plea was involuntary and that counsel was ineffective in allowing him to plead under the mistaken belief that he could be sentenced consecutively for three charges (DUI manslaughter - impairment theory, DUI manslaughter - unlawful blood alcohol level theory, and vehicular homicide) arising from a single death. At the plea hearing, appellant was advised that he could receive consecutive fifteen-year sentences on the three counts for a total of forty-five years in prison even though appellant was facing a maximum of fifteen years in prison on this set of charges. *See State v. Lewek*, 656 So.2d 268 (Fla. 4th DCA 1995); *Ivey v. State*, 47 So. 3d 908, 910-11 (Fla. 3d DCA 2010). Appellant's claim is legally sufficient and not refuted by the record. *Parker v. State*, 762 So. 2d 527 (Fla. 4th DCA 1998). This matter is remanded for an evidentiary hearing.

Reversed and remanded.

CIKLIN, LEVINE and CONNER, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas M. Lynch IV, Judge; L.T. Case No. 06-007940 CF10A.

James Turner, Live Oak, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.