

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2012*

**STEVE GARABEDIAN,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D11-811

[October 10, 2012]

PER CURIAM.

We reverse the trial court's order summarily denying appellant's Rule 3.850 motion for postconviction relief. The records attached by the trial court do not conclusively refute appellant's allegation that trial counsel incorrectly advised him before the plea that he could move for a "downward departure" from the mandatory minimum penalties provided by the drug trafficking statute. See § 893.135(4), Fla. Stat. (2009). The law is well settled that the trial court cannot *sua sponte* reduce the mandatory minimum sentence required by the drug trafficking statute absent a motion by the State. *State v. Taylor*, 411 So.2d 993 (Fla. 4th DCA 1982). We remand for the court to hold an evidentiary hearing or to attach records, if any exist, that conclusively refute the claim.

*Reversed and remanded.*

HAZOURI, CIKLIN and CONNER, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Stephen A. Rapp, Judge; L.T. Case Nos. 2009CF013007AXX, 2009CF013005AXX, 2009CF013004AXX and 2009CF013002AXX.

James L. Eisenberg and Kai Li Aloe Fouts, of Eisenberg & Fouts, P.A., West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Melvin G. Mosier, Assistant Attorney General, West Palm Beach, for appellee.

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