

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)
)
 Appellant,)
)
 v.)
)
 MICHAEL RAHAL,)
)
 Appellee.)
 _____)

Case No. 2D09-1786

Opinion filed May 7, 2010.

Appeal from the Circuit Court for
Hillsborough County; Manuel A. Lopez,
Judge.

Bill McCollum, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa, for
Appellant.

Sharon Morgan Vollrath, Tampa, for
Appellee.

LaROSE, Judge.

The State appeals Michael Rahal's downward departure sentence after the trial court granted his motion to mitigate his 34.5-month prison sentence for perjury and reduced his sentence to five years' probation. See Fla. R. Crim. P. 3.800(c). The

State raises several issues, none of which we need to address because Mr. Rahal's counsel concedes ineffective assistance of counsel in the sentencing process. Based on the record before us, we reverse and remand for a new evidentiary hearing on Mr. Rahal's motion to mitigate his sentence. See § 921.0026(2), Fla. Stat. (2004); State v. Scherber, 918 So. 2d 423, 424 (Fla. 2d DCA 2006); State v. Ayers, 901 So. 2d 942, 944-45 (Fla. 2d DCA 2005); Rafferty v. State, 799 So. 2d 243, 248 (Fla. 2d DCA 2001). The trial court may again depart downward from the guidelines if it finds that the defense has proven legally sufficient reasons.

Reversed and remanded.

CASANUEVA, C.J., and WHATLEY, J., Concur.