

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

HENRY GOINS, )  
 )  
Appellant, )  
 )  
v. ) CASE NO. 2D04-2160  
 )  
STATE OF FLORIDA, )  
 )  
Appellee. )  
\_\_\_\_\_ )

Opinion filed December 10, 2004.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Pinellas County; Richard A. Luce,  
Judge.

CASANUEVA, Judge.

Henry Goins appeals the trial court's order denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm without prejudice to Goins' right to file, within sixty days of this court's mandate, a motion to withdraw his plea pursuant to rule 3.850.

In his motion, Goins alleged that his sentence was not executed in accordance with the written plea agreement. Goins did not, however, seek to withdraw

his plea. Because Goins did not seek the appropriate relief, the trial court correctly denied his motion. See Green v. State, 857 So. 2d 304 (Fla. 2d DCA 2003). Accordingly, we affirm the trial court's order without prejudice to Goins' right to file in the trial court, within sixty days of the date of this court's mandate, a motion seeking to withdraw his plea pursuant to rule 3.850. If filed within sixty days, the motion should be considered timely and not deemed successive.

We caution Goins that if he decides to withdraw his plea and not be bound by the plea agreement, the State, too, will not be bound by the plea agreement. See id. at 306. If Goins withdraws his plea, either side may pursue new plea negotiations or refuse them and proceed to trial. If Goins is convicted after trial, he may be sentenced to a longer term of imprisonment than the sentence he presently serves.

Affirmed.

CANADY and VILLANTI, JJ., Concur.