

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed November 19, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-2586
Lower Tribunal No. 01-37444

Carlton Paul Bacon,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge.

Carlton Paul Bacon, in proper person.

Bill McCollum, Attorney General, for appellee.

Before SUAREZ, CORTIÑAS, and ROTHENBERG, JJ.

SUAREZ, J.

Carlton Paul Bacon appeals from a trial court order denying his petition for relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm in part and reverse in part.

The trial court failed to address, in its order denying relief, the issue raised by Bacon in his amended 3.850 petition regarding trial counsel's failure to object to the "and/or" clause in the instructions on conspiracy that were read to the jury. We remand this sole issue to the trial court with instructions to address the merits of Bacon's claim in light of Garzon v. State, 980 So. 2d 1038 (Fla. 2008), and, if the issue has no merit, to attach records that conclusively refutes the defendant's claims. We affirm the order on appeal in all other respects.

Affirmed in part, reversed in part.