

Third District Court of Appeal

State of Florida, July Term, A.D., 2009

Opinion filed November 25, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-623
Lower Tribunal No. 96-41559

Gabriel Rodriguez,
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, Marisa Tinkler Mendez, Judge.

Gabriel Rodriguez, in proper person.

Bill McCollum, Attorney General, and Richard L. Polin, Chief Assistant Attorney General, for appellee.

Before WELLS, LAGOA, and SALTER, JJ.

LAGOA, Judge.

This is an appeal of an order summarily denying a motion under Florida Rule of Criminal Procedure 3.800(a). On appeal from a summary denial, this

Court must reverse unless the postconviction record, see Fla. R. App. P. 9.141(b)(2)(A), shows conclusively that the appellant is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(D).

Appellant asserts that in his probation violation case he is entitled to credit for time served. The trial court's order denying appellant's motion, however, fails to attach any records refuting appellant's allegation. If the trial court again enters an order summarily denying the postconviction motion, the court shall attach record excerpts conclusively showing that the appellant is not entitled to the credit for time served.

For the reasons stated, we reverse the denial of credit for time served and remand for further proceedings on that claim. We affirm, however, the denial of the defendant's remaining claims without discussion.

Affirmed in part, reversed in part, and remanded for further proceedings consistent herewith.