

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2003

LAUDI DIAZ,

**

Appellant,

**

CASE NO. 3D01-3000

**

vs.

**

LOWER TRIBUNAL

THE STATE OF FLORIDA,

CASE NO. 94-38682

**

Appellee.

**

Opinion filed May 21, 2003.

An appeal from the Circuit Court of Miami-Dade County, Roberto Pineiro, Judge.

John H. Lipinski, for appellant.

Charles J. Crist, Jr., Attorney General, and John D. Barker, Assistant Attorney General, for appellee.

Before GREEN, FLETCHER, and SHEVIN, JJ.

PER CURIAM.

We affirm the trial court's denial of Diaz' motion for post-conviction relief. See Smith v. State, 697 So. 2d 991 (Fla 4th DCA

1997) (it is the trial court's responsibility to make findings of fact as to witness credibility). We do, however, reverse the trial court's finding that Diaz was guilty of criminal contempt. See Rhoads v. State, 817 So. 2d 1089 (Fla. 2d DCA 2002) (for a witness to be held in direct criminal contempt based on purported perjurious testimony there must be judicial knowledge of the falsity); Newry v. State, 654 So. 2d 1292 (Fla. 4th DCA 1995) ('[T]he mere fact that the court believes one witness over another is insufficient to establish judicial knowledge [of false testimony]', citing from Emanuel v. State, 601 So. 2d 1273 (Fla. 4th DCA 1992)); Emanuel, 601 So. 2d at 1275 ([Direct] contempt should be reserved for the most blatant cases in which perjury is virtually undisputed.).

Affirmed as to the denial of the post-conviction motion; reversed as to the trial court's finding that Diaz was guilty of contempt.