

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, 2004

THE STATE OF FLORIDA,	**	
Appellant,	**	
vs.	**	CASE NO. 3D02-1292
ANTONIO RAMON RODRIGUEZ,	**	LOWER
Appellee.	**	TRIBUNAL NO. 00-26434

Opinion filed February 18, 2004.

An Appeal from the Circuit Court for Dade County, Roberto M. Pineiro, Judge.

Charles J. Crist, Jr., Attorney General, and Thomas C. Mielke, Assistant Attorney General, for appellant.

Humberto R. Dominguez, for appellee.

Before SCHWARTZ, C.J., LEVY and SHEVIN, JJ.

LEVY, Judge.

The State of Florida appeals from a sentence imposed pursuant to a plea to a lesser included offense. We reverse.

On September 15, 2000, the State filed an Information against the Defendant, charging him with one count of cannabis trafficking. The Defendant entered a plea of no contest to the lesser included offense of possession of marijuana with intent to deliver. The trial court found the Defendant guilty, withheld adjudication, and imposed one year of community control followed by one year of probation. The Defendant was required to perform 300 hours of community service with the possibility of converting the last six months of community control to probation. This appeal follows.

The State contends that the trial court erred in accepting a plea to the lesser included offense without the consent of the prosecutor. We agree. Florida Rule of Criminal Procedure 3.170(h) states that a defendant "may plead guilty to any lesser offense than that charged that is included in the offense charged in the indictment or information or to any lesser degree of the offense charged" with the consent of the trial court and of the prosecutor. The Record does not indicate any agreement by the State to the reduced charge. Thus, the trial court improvidently accepted the plea to the lesser included offense absent consent from the State. Accordingly, this case is reversed and remanded to the trial court for proceedings consistent with this Opinion.

Reversed.