

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. 2004

CASEY HOLMES,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-504
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 97-26076

Opinion filed April 21, 2004.

An Appeal from the Circuit Court for Miami-Dade County, Mary Barzee, Judge.

Bennett H. Brummer, Public Defender, and Marti Rothenberg, Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General, and Roberta G. Mandel, Assistant Attorney General, for appellee.

Before GERSTEN, GODERICH and SHEVIN, JJ.

PER CURIAM.

Casey Holmes appeals an order denying his motion for postconviction relief. We affirm the court's denial of the motion on claim 2. However, we reverse the denial on the

remaining claims raised by defendant and remand for further proceedings. The state correctly concedes that these claims are facially sufficient and that the court did not attach portions of the record conclusively refuting the claims. On remand, the court may summarily deny these claims if they are conclusively refuted by the record, and attach those portions of the record to its order, or grant defendant an evidentiary hearing. Peede v. State, 748 So. 2d 253 (Fla. 1999); Padilla v. State, 861 So. 2d 1278 (Fla. 3d DCA 2003); Lasprilla v. State, 857 So. 2d 1011 (Fla. 3d DCA 2003).

Reversed and remanded.