

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

EDDIE L. COWART,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-740
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 98-35735

Opinion filed February 4, 2004.

An appeal under Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jerald Bagley, Judge.

Eddie L. Cowart, in proper person.

Charles J. Crist, Jr., Attorney General, and Marni A. Bryson, Assistant Attorney General, for appellee.

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

PER CURIAM.

Eddie Lee Cowart appeals an order denying his motion for postconviction relief. We remand for an evidentiary hearing (or attachment of record excerpts refuting his claim) on one issue only. As we interpret the motion, defendant-appellant Cowart

contends that his trial counsel affirmatively misadvised him that he did not qualify as a habitual offender. The defendant maintains that based on this misadvice, he rejected a favorable twenty-four-month plea offer which had been made by the State. Upon conviction the court sentenced him to twenty years as a habitual offender. As the record now before us does not conclusively refute the defendant's claim, we remand for an evidentiary hearing on that issue only. See Fla. R. App. P. 9.141(b)(2)(D). We express no opinion on the merits of the claim.

We affirm the trial court's rejection of the defendant's remaining claims.

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