

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

JAMES WHEELER,

**

Appellant,

**

vs.

**

CASE NO. 3D03-1268

THE STATE OF FLORIDA,

**

LOWER

Appellee.

**

TRIBUNAL NO. 98-30348

Opinion filed July 7, 2004.

An Appeal from the Circuit Court for Dade County, Cecilia M. Altonaga, Judge.

Bennett H. Brummer, Public Defender, and Ivy R. Ginsberg, Special Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General, and Fredericka Sands, Assistant Attorney General, for appellee.

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

PER CURIAM.

This case is reversed and remanded so that the trial court may rule on those grounds stated in appellant's motion for post conviction relief which the court erroneously held to be abandoned. We affirm to the extent that the trial court ruled on the merits of the motion relating to the grounds that the Court set for hearing.

Affirmed in part, reversed in part and remanded.