

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

CIRO MIGUEL PEREIRA,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-1400
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 98-18553

Opinion filed January 21, 2004.

An Appeal under Florida Rule of Appellate Procedure 9.141(b) (2) from the Circuit Court for Miami-Dade County, Lawrence A. Schwartz, Judge.

Paul J. Kneski, for appellant.

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

Before COPE, LEVY and SHEVIN, JJ.

SHEVIN, Judge.

We reverse the order denying defendant's motion for postconviction relief, and remand this matter to the trial court for an evidentiary hearing on grounds of ineffective assistance of trial counsel raised in defendant's motion. See McLin v. State, 827 So. 2d 948 (Fla. 2002) (where no evidentiary hearing held on ineffective assistance of counsel appellate court must

accept defendant's factual allegations to the extent they are not refuted by the record). We affirm the trial court's order as to the remaining issues raised.

Affirmed in part, reversed in part, and remanded for an evidentiary hearing.