

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2003

CEDRIC THOMPSON,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-1616
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NOS. 94-20325 94-17438

Opinion filed November 26, 2003.

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

Cedric Lemar Thompson, in proper person.

Charles J. Crist, Jr., Attorney General, and Jill K. Traina, Assistant Attorney General, for appellee.

Before COPE, GODERICH and SHEVIN, JJ.

SHEVIN, Judge.

We reverse the order summarily denying defendant's motion for post-conviction relief based on ineffective assistance of trial counsel. The court erred in concluding that the motion

was untimely, as it was filed within two years of the conviction becoming final. Fla. R. Crim. P. 3.850. Additionally, the motion was improperly denied on grounds that the claims asserted by defendant were or could have been raised on direct appeal. Ineffective assistance of trial counsel claims are properly raised in post-conviction relief motions, not direct appeals. Fla. R. Crim. P. 3.850; Robinson v. State, 637 So. 2d 998 (Fla. 1st DCA 1994). Moreover, although the state, on appeal, addresses the merits of the defendant's claims, those claims appear facially sufficient and must be considered by the trial court on remand. On remand, the court may attach to its order those portions of the record which conclusively show that the movant is not entitled to relief, see Fla. R. Crim. P. 3.850(d), or, alternatively, must conduct an evidentiary hearing.

Reversed and remanded.