

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

MANUEL ALFARO,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-2412
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 99-43496

Opinion filed February 4, 2004.

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

Manuel Alfaro, in proper person.

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

Before COPE, GODERICH and FLETCHER, JJ.

PER CURIAM.

Manuel Alfaro appeals an order denying his motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. Defendant-appellant Alfaro alleges that after he was arrested, he was offered a thirty-nine-month plea bargain which he

did not accept because his appointed counsel failed to explain that the offered sentence would be shortened by gain time and credit for jail time served. He contends that had this been explained, he would have accepted the plea.

The defendant later accepted a less favorable plea bargain which was offered by the court, consisting of five years incarceration followed by community control and probation. The materials in the limited record now before us do not conclusively confirm or refute the existence of the earlier thirty-nine-month plea offer which the defendant claims the State made.

Since the record does not at this point conclusively refute the defendant's claim, we remand the case for an evidentiary hearing or attachment of record excerpts conclusively refuting the defendant's claim. See Fla. R. App. P. 9.141(b)(2)(d); Fla. R. Crim. P. 3.850(d); Margiotti v. State, 844 So. 2d 829, 830 (Fla. 3d DCA 2003). We express no opinion on the merits of the defendant's claim but only say at this point that the record now before us does not conclusively refute it.

Reversed and remanded for further proceedings consistent herewith.