

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

LEONARD WAGNER,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-2626
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 98-2800

Opinion filed March 3, 2004.

An Appeal from the Circuit Court for Dade County, Pedro P. Echarte, Jr., Judge.

Leonard Wagner, in proper person.

Charles J. Crist, Jr., Attorney General and Annette M. Lizardo, Assistant Attorney General, for appellee.

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

PER CURIAM.

The trial court dismissed the appellant's 3.850 motion on the grounds of untimeliness and successiveness. Because, as the state correctly acknowledges, both conclusions were incorrect, the order under review is reversed for consideration of the motion on its merits.