

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

JOSEPH CARTER,

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Appellant,

\*\*

CASE NO.:3D03-2699

vs.

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LOWER

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TRIBUNAL NO.:79-5376

THE STATE OF FLORIDA,

\*\*

Appellee.

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Opinion filed February 25, 2004.

An appeal from the Circuit Court for Miami-Dade County,  
Maria Dennis, Judge.

Joseph Carter, for appellant.

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

Before GODERICH, GREEN, and WELLS, JJ.

PER CURIAM.

The defendant appeals an order denying as untimely his rule  
3.853 motion for postconviction DNA testing. In light of the

State's concession that the motion was timely filed, we reverse and remand for further consideration on the merits.

We affirm the denial of his rule 3.800(a) motion to correct an illegal sentence.

Affirmed in part, reversed in part.