

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

CARLOS H. NIEVES,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-3238
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 97-28936

Opinion filed March 17, 2004.

An Appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit Court for Dade County, Jacqueline Hogan Scola, Judge.

Carlos H. Nieves, in proper person.

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

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

PER CURIAM.

Affirmed. See *Gathers v. State*, 838 So. 2d 504 (Fla. 2003);  
*State v. McBride*, 848 So. 2d 287 (Fla. 2003).