

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

LONNIE R. GUNDER,

**

**

Appellant,

**

CASE NO. 3D04-172

vs.

**

THE STATE OF FLORIDA,

**

LOWER TRIBUNAL

CASE NO. 03-24954

Appellee.

**

Opinion filed March 3, 2004.

An Appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit
Court of Miami-Dade County, Pedro P. Echarte, Jr., Judge.

Lonnie R. Gunder, in proper person.

Charles J. Crist, Jr., Attorney General, for appellee.

Before FLETCHER, RAMIREZ, and SHEPHERD, JJ.,

PER CURIAM.

Lonnie R. Gunder appeals from the lower court's denial of
relief pursuant to Florida Rule of Criminal Procedure 3.800. We
affirm.

The record shows that on September 23, 2003, Gunder pled to possession of cocaine and was sentenced to five years in state prison with credit for time served. The docket indicates that the court gave Gunder a week's furlough, providing that it would mitigate the sentence to 270 days with participation in the Treatment Alternatives to Street Crime [TASC] program upon Gunder's surrender on September 30, 2003. Gunder failed to appear and was taken into custody a month later. Gunder filed a motion to reduce or modify the sentence, claiming that his failure to appear was not willful, and that his plea was actually to the 270 days and TASC. Gunder is incorrect. The record shows that Gunder agreed to a plea of five years with credit for time served, which sentence could have been mitigated by his appearance at the end of the furlough he requested; his failure to appear was unexcused and not de minimis. We therefore affirm Gunder's legal sentence imposed pursuant to his plea.

Affirmed.