

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed October 22, 2008.

No. 3D08-1804
Lower Tribunal No. 97-33314

Daniel Hilbert,
Petitioner,

vs.

The State of Florida,
Respondent.

A case of original jurisdiction – Habeas Corpus.

Daniel Hilbert, in proper person.

Bill McCollum, Attorney General, and Rolando A. Soler, Assistant Attorney General, for respondent.

Before RAMIREZ, SUAREZ, and CORTIÑAS, JJ.

PER CURIAM.

We grant the defendant's petition and remand for a new trial on the conspiracy counts only because, as the State properly concedes, this relief is necessary to prevent a manifest injustice. Baker v. State, 878 So. 2d 1236 (Fla. 2004); McKay v. State, 988 So. 2d 51 (Fla. 3d DCA 2008).

This court has afforded relief to two of Hilbert's co-defendants finding that the court should not have given a principal instruction in connection with the conspiracy counts brought against the men. Id.; Evans v. State, 985 So. 2d 1105 (Fla. 3d DCA 2007); Johnson v. State, 33 Fla. L. Weekly D2285 (Fla. 3d DCA Sept. 24, 2008). Hilbert was convicted on two counts of conspiracy; justice requires that he be afforded the same relief. We therefore reverse Hilbert's convictions and remand for a new trial on those counts. We do not disturb the defendant's conviction for grand theft.

Reversed and remanded.