

Third District Court of Appeal

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

Opinion filed September 3, 2008.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-1848
Lower Tribunal No. 91-22063

John M. De Pena,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Reemberto Diaz, Judge.

John M. De Pena, in proper person.

Bill McCollum, Attorney General, for appellee.

Before RAMIREZ, SHEPHERD, and SALTER, JJ.

PER CURIAM.

This is an appeal of an order summarily denying a motion under Florida Rule of Criminal Procedure 3.800(a). On appeal from a summary denial, this

Court must reverse unless the post-conviction record shows conclusively that the appellant is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(D).

De Pena has raised a facially sufficient claim for rule 3.800(a) relief that the trial court, by summarily denying the motion, has failed to conclusively refute. Because the record now before us fails to make the required showing, we reverse the order and remand for further proceedings. On remand, if the trial court again enters an order denying the post-conviction motion, the trial court shall attach written portions of the record conclusively refuting the defendant's claim. See Fla. R. App. P. 9.141(b)(2)(D) (requiring reversal by this Court unless the record shows conclusively that the defendant is entitled to no relief).

Reversed and remanded for further proceedings.