

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed April 8, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-2561

Lower Tribunal No. 97-13409

Jose A. Diaz,
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, Rosa I. Rodriguez, Judge.

Jose A. Diaz, in proper person.

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

Before COPE, RAMIREZ, and SALTER, JJ.

PER CURIAM.

This is an appeal of an order summarily denying a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. We affirm in part and reverse in part.

As part of Argument 1, defendant-appellant Diaz contends that his sentence exceeds the legal maximum on counts four, five, eight, and ten through thirteen. See Fla. R. Crim. P. 3.850(a)(4). The trial court's order denied the motion and directed that the postconviction record include the State's Amended Response with all attachments. However, those documents were not transmitted to this court, and the State has been unable to locate any response filed in connection with this particular Rule 3.850 motion. Because the record now before us does not conclusively refute the defendant's claim, we reverse the denial order insofar as the defendant contends that the sentences exceed the legal maximum on the above-mentioned counts. If the trial court again summarily denies the motion, it shall attach documents conclusively refuting the defendant's claim. See Fla. R. App. P. 9.141(b)(2)(D). We affirm the denial order with regard to the balance of the defendant's Rule 3.850 motion.

Affirmed in part, reversed in part, and remanded for further proceedings consistent herewith.