

# Third District Court of Appeal

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

Opinion filed October 21, 2009.

Not final until disposition of timely filed motion for rehearing.

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No. 3D08-3020

Lower Tribunal Nos. 93-19049; 93-13003; 93-36282; 93-14594B; 93-28736; 93-28739; 93-28795; 93-28735

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**Hiraldo Valle,**  
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, John Thornton, Judge.

Julio Ferrer-Roo, for appellant.

Bill McCollum, Attorney General, and Richard L. Polin, Assistant Attorney General, for appellee.

Before GERSTEN and COPE, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

This is an appeal of an order denying a combined motion under Florida Rules of Criminal Procedure 3.850 and 3.800(a). We affirm with regard to the first claim but, as conceded by the State, with leave for defendant-appellant Valle to file an amended motion if he has a good faith basis to do so. See Spera v. State, 971 So. 2d 754 (Fla. 2007). The defendant shall file the amended motion, if any, within sixty days after the issuance of this court's mandate.

With regard to the second claim, the State concedes that the present postconviction record does not conclusively refute the claim. While the State contended in its trial court response that the defendant pled guilty to the offense of kidnapping, not armed kidnapping, neither the State's trial court response nor the court's order attached the judgment. Because the postconviction record now before does not conclusively refute the defendant's claim, see Fla. R. App. P. 9.141(b)(2)(D), we remand for further consideration of the second claim. If the trial court again summarily denies the claim, it shall attach to the denial order the documents which conclusively refute the defendant's claim.

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