

Third District Court of Appeal

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

Opinion filed February 4, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D08-3313
Lower Tribunal No. 04-13669

Michael C. Dunn,
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, Julio E. Jimenez and Mark King Leban, Judges.

Michael C. Dunn, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, RAMIREZ, 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).

Michael C. Dunn 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.