

# **Third District Court of Appeal**

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

Opinion filed August 26, 2009.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-702  
Lower Tribunal No. 87-14748B

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**Jorge Perez,**  
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, Dava J. Tunis, Judge.

Jorge Perez, in proper person.

Bill McCollum, Attorney General, for appellee.

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

COPE, J.

This is an appeal of an order summarily denying a motion under Florida Rule of Criminal Procedure 3.800(a). Defendant-appellant Perez claims a discrepancy between his sentence and the oral pronouncement by the trial court. The trial court denied the motion finding that defendant entered into a written plea agreement for the sentence imposed. Neither the trial court nor the State, however, attached a copy of the sentencing transcript or the written plea agreement.

On appeal from a summary denial, this court must reverse unless the postconviction record, see Fla. R. App. P. 9.141 (b) (2) (A), shows conclusively that the appellant is entitled to no relief. See Fla. R. App. P. 9.141 (b) (2) (D).

Because the record now before us fails to make the required showing, we reverse the order and remand for further proceedings. If the trial court again enters an order summarily denying the postconviction motion, the court shall attach record excerpts conclusively showing that the appellant is not entitled to any relief.

We point to two special considerations. First, the State's trial court response indicated that the defendant entered into a sealed plea agreement in this case. If the plea agreement is sealed and needs to remain sealed, then the plea agreement may be transmitted to this court under seal.

Second, the Florida Supreme Court has imposed some special rules where, as here, a defendant maintains that the written sentence deviates from the oral pronouncement. Williams v. State, 957 So. 2d 600, 604 (Fla. 2007); see Lopez v.

State, 2 So. 3d 1057, 1059 (Fla. 3d DCA 2009). Neither the State's trial court response nor the trial court's order addresses whether or not a sentencing transcript is in the court file. If it is, then the court may attach the sentencing transcript to its order. If sealed, it may be transmitted under seal. If no transcript is in the court file, then the trial court may deny this part of the defendant's motion without prejudice to the filing of an amended motion attaching the sentencing transcript. Williams, 957 So. 2d at 604.

For the stated reasons, we reverse the order now before us and remand for further proceedings consistent herewith.

Reversed and remanded for further proceedings.