

Third District Court of Appeal

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

Opinion filed September 30, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-1181
Lower Tribunal No. 02-27051

Osmel Fernandez,
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 W. Thornton, Judge.

Osmel Fernandez, in proper person.

Bill McCollum, Attorney General, and Nicholas Merlin, Assistant Attorney General, for appellee.

Before RAMIREZ, SUAREZ, and CORTIÑAS, JJ.

PER CURIAM.

This is an appeal of an order summarily denying a motion under Florida Rule of Criminal Procedure 3.850(a). On appeal from a summary denial, this Court must reverse unless the post-conviction 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 post-conviction motion, the court shall attach record excerpts conclusively showing that the appellant is not entitled to any relief.

Reversed and remanded for further proceedings.