

# Third District Court of Appeal

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

Opinion filed November 12, 2009.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D09-2529  
Lower Tribunal No. 05-23921

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**Elliott McKnight,**  
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.

Elliott McKnight, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, GERSTEN and SUAREZ, 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.\* Defendant-appellant Elliot McKnight alleges that he signed a written plea agreement whereby he pled guilty to eight counts of attempted sexual battery on a minor. According to the defendant, the written plea agreement provided for a sentence of ten years.

When the case came before the judge for sentencing, the defendant was sentenced to ten years of incarceration followed by ten years of probation. The defendant alleges that this sentence exceeded the sentence specified by the written plea agreement. The postconviction record now before us contains the plea colloquy but does not contain the written plea agreement.

On appeal from an order summarily denying a motion for postconviction relief, this court is required to reverse unless the postconviction record conclusively shows that the defendant is not entitled to any relief. Fla. R. App. P. 9.141(b)(2)(D). We therefore reverse the order now before us and remand for further proceedings. If the trial court again denies relief, it shall attach record excerpts conclusively showing that the defendant is not entitled to any relief.

Reversed and remanded for further proceedings consistent herewith.

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\* For earlier proceedings, see McKnight v. State, 964 So. 2d 803 (Fla. 3d DCA 2007).