IN THE SUPREME COURT
OF FLORIDA

CASE NO. SC05-2163

DARYL WILLIAMS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Discretionary Review of a Certified Conflict
Decision of the Fourth District Court of Appeal

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

In this post-conviction case, Petitioner Daryl Williams seeks review of the judgment of the Fourth District Court of Appeal (R-40-41), which affirmed the denial of his Rule 3.800(a) Motion to Correct Illegal Sentence, but certified conflict. R-20-22, 27.[1] This Court appointed counsel for briefing on the merits, but has postponed a decision on jurisdiction. R-1.

The issues are whether an allegation that the judgment and sentence does not comport with the sentencing court's oral pronouncement states a claim for relief under Rule 3.800(a); whether that claim may be denied without examining a transcript of the sentencing hearing; whether an inmate has the burden of supporting his motion with that transcript, and if not, the proper disposition of the motion if the sentencing hearing transcript is not in the record.

Williams alleged that a scoresheet prepared during plea negotiations reflected a minimum sentence of eleven years, for the offense of burglary of a dwelling. R-17-18; R-20. He "subsequently plead to the court," on December 21, 1999, and the trial court, Judge John L. Phillips, after hearing testimony from the victim and the arresting officer requesting leniency,

[1] Because the record transmitted by the District Court was not paginated, the Record References in this Brief refer to the pagination provided in "Petitioner's Notice of Filing Paginated Record on Appeal," filed in this Court on January 3, 2006.

allegedly orally pronounced a sentence of "`Eleven (11) years straight up'" (132 months). R-18.

Williams alleged in his February 4, 2005 Rule 3.800(a) Motion that he had "recently" learned that the written judgment reflected a sentence of 175 months (fourteen years seven months), when he was advised of his ineligibility for a work release program because of the length of sentence remaining. R-18.[2] Apparently because he was unaware of the alleged discrepancy, no earlier post-judgment motions were ever filed seeking to correct the alleged error.

Williams' Rule 3.800(a) Motion alleged that it is "apparent from the transcripts of Defendant's sentencing hearing on 12/21/99" that an eleven-year sentence was intended, and asked the court "to take judicial notice of its own court records, wherein it will substantiate Defendant's claim that the written order does not conform with the sentence orally pronounced in open court by Judge Phillips." R-18.

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[2] We note that there is no requirement that a copy of the written judgment and sentence be served on the defendant; indeed, that proposal was made, and was rejected by this Court. *See Amendments to Florida Rules of Criminal Procedure3.670 and 3.700(b)*, 760 So. 2d 67 (Fla. 1999). Rule 3.670 provides that, unless the written judgment is hand-delivered at the time of sentencing, "the clerk of court shall serve on counsel for the defendant and counsel for the state a copy of the judgment of conviction and the sentence entered. . . ."

A successor judge, the Honorable Richard Wennet, denied the post-conviction Motion "as legally insufficient." He attached the "handwritten notes of the Clerk of Court taken contemporaneously with the sentence. . . ." *See* R-20-22 (Order Denying Relief). Judge Wennet concluded that the clerk's notes "demonstrate the oral pronouncement is the same as the written sentence also attached." *Id.; see* R-21 (written sentence); R-22 (clerk's handwritten notes). The transcript of the sentencing hearing was not referenced in or attached to the Order denying the Rule 3.800(a) Motion.

Williams sought rehearing, urging the court to examine the sentencing transcript, and suggesting that the simultaneous sentencing of multiple defendants might have resulted in a clerical error:

> The defendant would note that at his sentencing the court was sentencing various different people, at the same time, in the same proceeding. It is probable that the clerk ***incorrectly*** completed the court minutes in the defendant's case, to reflect ***another individual's sentence***. The only way to refute the defendant's allegation is to refer to the ***actual transcript*** of the sentencing proceeding.

R-24-25 (Motion for Rehearing, ¶ 5) (emphasis in original). In addition, Williams argued that his Motion was not "legally insufficient" for failing to attach the transcript itself, and that the affirmative allegation that the "face of the record" demonstrates an entitlement to relief is sufficient, because a transcript of the sentencing proceeding is a substantive part of the record.

Id. at ¶ 6. The trial court summarily denied the Motion for Rehearing, without comment. R-27.

In a summary appellate proceeding, at which Williams acted *pro se* and the State did not appear (*see* R. 9.141(b)(2), Fla.R.App.P.), the Fourth District initially issued a *per curiam* affirmance, citing *Campbell v. State*, 718 So. 2d 886 (Fla. 4th DCA 1998). R-31. *Campbell* held that a claim that a written sentence does not comport with the oral pronouncement of sentence is not cognizable as an illegal sentence *via* Rule 3.800(a), because such an error is "caused by noncompliance with a procedural rule," rather than in violation of Florida Statutes or the state or federal constitutions. *Id.* Williams then moved for rehearing, certification of conflict with other districts, or rehearing *en banc.* R-32-38.

The District Court granted that motion (R-39), withdrew the initial opinion, and issued another opinion, again affirming the denial of relief, but certifying conflict. R-40-41. The opinion noted that Williams' Rule 3.800(a) Motion had "[n]o attachments, such as a transcript of the sentencing proceeding," presumably deemed to be a deficiency, because the court certified conflict with *Fitzpatrick v. State*, 863 So. 2d 462 (Fla. 1st DCA 2004), which reversed the summary denial of such a motion and put the burden on the trial court to "either attach the transcript or take such other

action as may be appropriate." *Id*. at 463. Conflict was also certified with *Berthiaume v. State*, 864 So. 2d 1257 (Fla. 5th DCA 2004), which similarly remanded for the court to examine the record.

On the issue of whether the "mere allegation" that the written judgment differs from the oral pronouncement of sentence is the type of claim that may be brought under Rule 3.800(a), the District Court also certified conflict with *Watts v. State*, 790 So. 2d 1175 (Fla. 2d DCA 2001), which held, contrary to *Campbell, supra*, that "[s]uch a claim is cognizable in a rule 3.800(a) proceeding."

Williams timely filed his notice to invoke the discretionary jurisdiction of this Court (R-42), and this proceeding followed.

ISSUES PRESENTED

I.

Whether an alleged deviation (here 43 months) between the incarcerative portion of a written judgment and the oral pronouncement of sentence is an illegal sentence that may be corrected *via* a Rule 3.800(a) motion?

If the answer to Issue I is Yes, then these issues arise:

II.

Whether a movant may plead a *prima facie* basis for relief under Rule 3.800(a) by identifying with particularity the nonhearsay record documents, such as the transcript, upon which he or she relies, without actually attaching them?

III.

Whether a trial court, before denying a Rule 3.800(a) motion that alleges a deviation between the incarcerative portion of a written judgment and the oral pronouncement of sentence, must attach record documents that conclusively refute the defendant / movant's allegations?

IV.

If the portions of the record referenced in the Rule 3.800(a) motion do not exist or cannot be located, but the allegations are not conclusively refuted by the record, what is the proper disposition of the motion?

SUMMARY OF ARGUMENT

A post-conviction claim that the written judgment (at least the incarcerative aspect) conflicts with and exceeds the oral pronouncement of sentence should be cognizable *via* a Rule 3.800(a) motion to correct an illegal sentence.[3] Such a written judgment violates due process of law and the Double Jeopardy Clause, and this Court has held that double jeopardy violations that appear on the face of the record constitute an illegal sentence, which may be remedied through Rule 3.800(a). *Hopping v. State*, 708 So. 2d 263 (Fla. 1998).

A movant should not be required to attach the portions of the record that support the allegations, but need only identify with particularity the nonhearsay documents in the court record upon which he or she relies. The trial court should examine the record and either grant relief, if warranted, or, if the record conclusively establishes no basis for relief, those portions of the record should be attached to the order denying relief. If the portions of the record identified in the motion do not, in fact, appear in the record -- such as when the movant refers to the sentencing "transcript" but the sentencing hearing was never transcribed and filed, as in many convictions where no

[3] This case does not present, and we do not address, whether discrepancies in other aspects of the sentence, such as conditions of probation, might result in an illegal sentence correctable through Rule 3.800(a).

direct appeal was taken -- the motion should be denied without prejudice, thus giving the movant an opportunity to obtain and file a copy of the transcript, and to refile the motion seeking to correct the sentencing error.

This Court has recognized that "a deviation from an oral pronouncement that results in an increased term of incarceration is a ***patent, serious sentencing error***. . . ," *Maddox v. State*, 760 So. 2d 89, 104 (Fla. 2000) (emphasis supplied). Moreover, it is an error that violates due process of law and the constitutional prohibition against double jeopardy. *See Fitzpatrick v. State*, 863 So. 2d 462 (Fla. 1st DCA 2004). Since no judge could lawfully impose a written judgment of sentence that imposes more incarceration than that which was orally pronounced, this type of error falls within the definition of "illegal sentence" announced in *Carter v. State*, 786 So. 2d 1173 (Fla. 2001).

Petitioner Daryl Williams, sentenced in 1999, alleged in his 2005 Rule 3.800(a) Motion that he only "recently" discovered that his written judgment deviated from the trial court's oral pronouncement of sentence by forty-three months, a not-insubstantial disparity that, if proven, ought to be correctable "at any time," under Rule 3.800(a). Thus, the Court should approve the precedents of the First, Second, Third, and Fifth Districts, which so hold, and should disapprove the Fourth District's conflicting decision below and

its foundation, *Campbell v. State*, 718 So. 2d 886 (Fla. 4th DCA 1998), which held that "a claim that a written sentence does not conform to the oral pronouncement cannot be raised" through Rule 3.800(a). *Id.*

Here, since the attachments to the Order denying relief did not "conclusively" refute the allegations of the Motion, the case should be remanded with instructions to examine the sentencing transcript, if available, or, if it is not in the record, to give Williams an opportunity to obtain it and to present his claims again, supported with that information.

ARGUMENT

A WRITTEN JUDGMENT IMPOSING A TERM OF IMPRISONMENT THAT EXCEEDS THE ORAL PRONOUNCEMENT OF SENTENCE IS AN ILLEGAL SENTENCE THAT SHOULD BE CORRECTED *VIA* RULE 3.800(a), AND A MOTION ASSERTING SUCH A CLAIM SHOULD NOT BE DENIED WITH PREJUDICE UNLESS THE ORDER ATTACHES THE SENTENCING TRANSCRIPT *CONCLUSIVELY* REFUTING THE ALLEGATIONS OF THE MOTION

The questions presented in this appeal, involving the legal sufficiency of the pleading under Rule 3.800(a), Fla.R.Crim.P., the scope of relief available under that rule of procedure, and how the rule is to operate, are issues of law subject to *de novo* review. *See State v. McBride*, 848 So. 2d 287, 289 (Fla. 2003).

The Fourth District's decision below, foreclosing a post-conviction claim that the written judgment erroneously requires forty-three additional months of incarceration that were neither intended nor pronounced by the sentencing judge, expresses a minority view among the district courts of appeal, which should be rejected by this Court. This type of error is, unfortunately, "frequently occurring," *see Amendments to the Florida Rules of Criminal Procedure*, 761 So.2d 1015, 1017 (Fla. 2000), and the types of claims that are cognizable under Rule 3.800(a) ought not to vary geographically within Florida. The conflict certified by the Fourth District

is clear, express, direct, and in need of resolution. The Court has postponed its decision on jurisdiction, but the substantiality of this issue and the fact that every one of the other district courts treats the issue differently than does the Fourth District, should persuade the Court to exercise its jurisdiction in this case and resolve the untenable conflict.

This Court has recognized the "long-standing principle of law -- that a court's oral pronouncement of sentence controls over the written document." *Ashley v. State*, 850 So. 2d 1265, 1268 (Fla. 2003); *see also State v. Jones*, 753 So. 2d 1276, 1277 n. 2 (Fla. 2000). And when the two are in conflict, with a written document that results in an increased term of incarceration, the Court has found that to be "a patent, serious sentencing error." *Maddox v. State*, 760 So. 2d 89, 104 (Fla. 2000).[4] One court has gone so far as to say that a written judgment imposing a more onerous sentence than was orally pronounced is "legally void." *Hood v. State*, 851 So. 2d 829, 830 (Fla. 1st DCA 2003).

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[4] We recognize that since the adoption of Rule 3.800(b)(2), Fla.R.Crim.P., even patent, serious, previously "fundamental" sentencing errors may not be corrected ***on direct appeal*** absent preservation and presentation to the trial court. *See Brannon v. State*, 850 So. 2d 452 (Fla. 2003). But the unavailability of review on direct appeal does not foreclose the later correction of an illegal sentence under Rule 3.800(a) (*see Wilson v. State*, 898 So. 2d 191 (Fla. 1st DCA 2005)), and our citation to *Maddox* is simply to emphasize that the type of sentencing error in this case is not one whose significance is *de minimus.*

Four of the five district courts of appeal permit correction of such an error in a Rule 3.800(a) post-conviction proceeding. *See Fitzpatrick v. State*, 863 So. 2d 462 (Fla. 1st DCA 2004); *Watts v. State*, 790 So. 2d 1175 (Fla. 2d DCA 2001); *Melton v. State*, 908 So. 2d 1136 (Fla. 3d DCA 2005); *Berthiaume v. State*, 864 So. 2d 1257 (Fla. 5th DCA 2004). Standing alone, the Fourth District holds that this type of claim is ***not*** cognizable in a Rule 3.800(a) motion. But as shown below, the majority rule is the better approach, and this Court should disapprove the decision below.

We begin with Rule 3.800 itself, which provides in pertinent part:

> (a) **Correction**. A court may at any time correct an illegal sentence imposed by it . . . when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief . . . .

Rule 3.800(a) "`is intended to balance the need for finality of convictions and sentences with the goal of ensuring that criminal defendants ***do not serve sentences imposed contrary to the requirements of law***.'" *State v. McBride*, 848 So. 2d 287, 289 (Fla. 2003) (emphasis supplied) (*quoting Carter*, 786 So. 2d at 1176). Nothing could be more contrary to the requirements of law and due process than a written judgment that imposes more prison time than was orally pronounced at the sentencing hearing. In addition, the First District has held that this type of error violates the

prohibition against double jeopardy. *See Fitzpatrick*, 863 So. 2d at 462, discussed *infra*, p. 15, n. 7. This Court held in *Hopping v.* State, 708 So. 2d 263 (Fla. 1998), that "where it can be determined without an evidentiary hearing that a sentence has been unconstitutionally enhanced in violation of the double jeopardy clause, the sentence is illegal and can be reached at any time under rule 3.800(a)." *Id.* at 264. Thus, if a discrepancy between the written judgment and the oral pronouncement is revealed, with the later-entered written judgment imposing more prison time than the oral pronouncement, no credible argument could be advanced that the longer written sentence is not illegal, under any definition of that word.

Rule 3.800(a) does not define, "illegal sentence." But most recently this Court has done so, rather restrictively, saying an illegal sentence is one that "`imposes a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances.'" *Carter v. State*, 786 So. 2d at 1173, 1181 (Fla. 2001) (*quoting Blakley v. State*, 746 So. 2d 1182, 1187 (Fla. 4th DCA 1999)). The State may argue that only a sentence that exceeds the statutory maximum under the applicable statutes qualifies as an "illegal sentence." But notably, the Court has not adopted a definition limited to a statutorily unauthorized length of punishment. *See State v. Mancino*, 714 So. 2d 429, 433 (Fla.

1998) (rejecting any contention that "*only* those sentences that facially exceed the statutory maximums may be challenged under rule 3.800(a) as illegal") (emphasis by the Court). Even post-*Mancino*, the *Carter / Blakley* definition has some room to accommodate sentences within the statutory range, but which are infected with other substantial and intolerable legal errors, such as here.[5]

The claim raised by Daryl Williams is unique among the various kinds of illegal sentences, because, allegedly, ***two different sentences*** have been imposed: one orally pronounced, one, considerably longer, set forth in the written judgment. Thus, a preliminary question arises, whether, as the Fourth District held, a facially "legal" written sentence (*i.e.*, one within the statutory maximum) should be impervious to post-conviction challenge under Rule 3.800(a), despite the allegation that the written judgment embodies a "patent, serious sentencing error" by deviating from the court's

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[5] Accordingly, post-*Carter* decisions have permitted relief under Rule 3.800(a), even though the challenged sentences did not exceed the statutory maximum. *See e.g.*, *Whitehead v. State*, 884 So. 2d 139 (Fla. 2d DCA 2004) (minimum mandatory sentence was illegal where grounds for enhancement were not alleged in the Information); *Gammon v. State*, 858 So. 2d 357 (Fla. 1st DCA 2003) (record showed no factual basis to support firearm mandatory minimum, where state had conceded that appellant did not possess a firearm during the commission of the offense); *Hood v. State*, 851 So. 2d 829 (Fla. 1st DCA 2003 (double jeopardy claim); *Dorminey v. State*, 837 So. 2d 528 (Fla. 2d DCA 2003) (claim for prison credit for time served).

oral pronouncement of sentence. We think not, because the type of claim here is uniquely fitted to Rule 3.800(a), as it can be determined without a hearing simply by reviewing the court's record, and by comparing the oral pronouncement with the written judgment. *See State v. Callaway*, 658 So. 2d 983, 988 (Fla. 1995) (claim under Rule 3.800(a) must be susceptible to resolution without an evidentiary hearing, and based on documents in the court's record), *receded from on other grounds, Dixon v. State*, 730 So. 2d 265 (Fla. 1999).

Fitzpatrick v. State, 863 So. 2d 462 (Fla. 1st DCA 2004), certified by the court below as being in conflict with this case, involved the allegation that the trial court had not orally pronounced an habitual offender sentence, but that the written judgment contained the habitual offender designation. The First District noted that "this is an issue implicating double jeopardy protections and an illegal sentence so as to be presentable under rule 3.800(a)." *Id.* Although the order denying the motion had referred to the sentencing transcript, the District Court "reversed . . . and remanded so that the court may either attach the transcript or take such other action as may be appropriate."[6] *Id.* That ruling comports with *Hopping v. State*, 708 So. 2d

[6] *Fitzpatrick*'s double jeopardy conclusion grew out of *Ashley v. State*, 850 So. 2d 1265 (Fla. 2003), where this Court held that "[o]nce a sentence has been imposed and the person begins to serve the sentence, that sentence

at 264, recognizing that double jeopardy claims apparent on the face of the record may be remedied in a Rule 3.800(a) proceeding.

Similarly, in *Berthiaume v. State*, 864 So. 2d 1257 (Fla. 5th DCA 2004), also certified to be in conflict with the decision below, the defendant alleged that the oral pronouncement that his sentence should be concurrent with another case was not reflected in the written judgment. The trial court denied the motion, but failed to attach the sentencing transcript to refute Berthiaume's allegation. The Fifth District reversed and remanded "for a determination whether the written sentences conform to the oral pronouncement." *Id.* Impliedly, the District Court put the burden on the trial judge to obtain the transcript, if it was not already of record.

The third case certified to be in conflict is *Watts v. State*, 790 So. 2d 1175 (Fla. 2d DCA 2001), where the defendant alleged that his 1994 sentence was to be concurrent with another case, and the trial court's order denying the motion "failed to attach a copy of the sentencing transcript or copies of any of the sentencing documents." *Id.* at 1176. Reversing, the

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may not be increased without running afoul of double jeopardy principles." *Id.* at 1267. In that case, the court originally orally sentenced the defendant as an habitual felony offender, but the written sentence designated him an habitual *violent* felony offender. He was recalled to court, and the judge then not only orally imposed the HVFO sentence, but also added a minimum mandatory provision. This Court found that the re-imposed sentence violated double jeopardy.

Second District held that "[s]uch a claim is cognizable in a rule 3.800(a) proceeding," and directed the trial court to "review the record and determine whether there is a discrepancy between the oral pronouncement by the resentencing judge and the written sentencing order." *Id.* Again, the burden was placed on the court to review the transcripts, perhaps assuming that they were available in the record.[7]

Although neither the decision below nor its certified conflict cases cited it, we find Rule 9.141(b)(2)(D), Fla.R.App.P., helpful. It applies to Rule 3.800(a) motions (as well as to Rule 3.850 and Rule 3.853 motions), and provides:

> (D) On appeal from the denial of relief, unless the record shows ***conclusively*** that the appellant is entitled to no relief, the order ***shall be reversed*** and the cause ***remanded*** for an evidentiary hearing or ***other appropriate relief***.

(emphasis supplied). For this type of claim, only the sentencing transcript could ever "conclusively" refute the defendant's allegations. *See Culver v. State*, 790 So. 2d 1126, 1127 (Fla. 2d DCA 2001) (trial court attached portions of the record, but appellate court reversed because attachments did

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[7] The Second District continues to adhere to that approach. *See Jones v. State*, 31 Fla. L. Weekly (Fla. 2d DCA Jan. 6, 2006) ("If the postconviction court again summarily denies the motion, it must set forth its rationale and attach any relevant portions of the record which support its denial").

not "conclusively" refute allegations of motion). So although Rule 3.800(a) refers to "court records," the transcript is the only court record that can satisfy the "conclusively" requirement of Rule 9.141(b)(2)(D), Fla.R.App.P. In this case, the documents attached to the Order denying relief, the handwritten clerk's notes and the written sentence, do not "conclusively" refute the allegations of Williams' Motion, and the Fourth District should have reversed the Order and remanded for "other appropriate relief," pursuant to Rule 9.141(b)(2)(D), *supra*.[8]

And since motions under Rule 3.800(a) are to be decided without the need for an evidentiary hearing (*State v. Callaway*, *supra*), the "evidentiary hearing" portion of the rule is inapplicable, and the question is what "other appropriate relief" is required if the trial court denies relief without attaching the trial transcript, as here.

As shown above, some appellate courts appear to place the burden on the trial court to obtain a transcript if none is in the court file, in order to conclusively rebut (or confirm) the allegations that the written judgment conflicts with the oral pronouncement. Certainly the court is better

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[8] The Third District routinely cites this rule when reversing orders summarily denying Rule 3.800(a) motions, when the attachments do not conclusively refute the allegations, referring to Rule 9.141(b)(2)(D) as the "standard of review." *See e.g., Lopez v. State*, 30 Fla. L. Weekly D2824 (Fla. 3d DCA Dec. 14, 2005); *Nish v. State*, 907 So. 2d 650 (Fla. 3d DCA 2005); *accord McCann v. State*, 854 So. 2d 788, 790 (Fla. 2d DCA 2003).

positioned than an incarcerated defendant to arrange with the court reporter to have a transcript prepared. However, if this Court is wary of imposing that burden on the judges of this State, particularly where Rule 3.800(a) motions are not required to be filed under oath (as are Rule 3.850 motions), we have a proposal to balance the competing interests inherent in Rule 3.800(a).

A person raising the type of claim at issue here would be best advised to support the allegations of the motion with a transcript of the sentencing hearing, which would allow the trial court to compare that with the written judgment and rule expeditiously on the motion. However, if the transcript is not available to the defendant when the motion is filed, the motion should be deemed legally sufficient if it identifies with particularity the nonhearsay documents ***in the court record*** upon which he or she relies, *i.e.*, the sentencing hearing transcript containing the oral pronouncement of the sentence. The court can then examine those documents and rule accordingly, attaching those documents that conclusively refute the defendant's allegation, if the motion is denied.

But if the court does not find the transcript in the court record, and if the court does not take it upon itself to obtain the transcript, the motion should be denied ***without prejudice***, and should advise the movant how to

order the necessary transcript and that the motion can be re-filed (and will not be barred as successive, by estoppel, or *res judicata*) if the necessary documentation is obtained. It is not uncommon for certain types of orders to contain directions to parties for seeking further review, and trial courts could easily include the name and address of the appropriate court reporting agency in an order summarily denying a motion, where the court record does not contain the necessary transcript.

That proposed procedure ensures that meritorious claims that a written judgment fails to conform to an oral pronouncement will be reviewed on their merits based upon the only conclusive document in the record -- the transcript -- and where the record is inadequate because the oral pronouncement of sentence was never transcribed and filed, the burden would be placed on the movant to correct that deficiency in order to obtain relief.[9]

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[9] The long delay in discovering that the written judgment apparently does not conform to the oral pronouncement, which occurred in this case, could be avoided if defense attorneys had a duty, articulated by this Court, to forward the written judgment to their clients. We realize that this would require a rule amendment, but in view of the fact that Rule 3.670 only ensures that the State and defense counsel, but not the defendant, receive a copy of the written judgment, this additional post-judgment responsibility should fall on the person best situated to know if the written judgment is accurate: defense counsel.

CONCLUSION

For the foregoing reasons, the decision below should be reversed, and the case remanded for a consideration of the Rule 3.800(a) motion on the merits, after a review of a transcript of the sentencing proceeding. If that transcript is not in the court file, the Rule 3.800(a) motion should not be denied with prejudice, but rather Daryl Williams should be given an opportunity to obtain the transcript.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with Rule 9.210, Fla.R. App.P., and is prepared in Times New Roman 14-point font.

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