

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2012

MARQUIS STOKES,

Appellant,

v.

Case No. 5D11-4338

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 20, 2012

3.800 Appeal from the Circuit Court
for Sumter County,
William H. Hallman, III, Judge.

Marquis Stokes, Milton, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee,
and Ann M. Phillips, Assistant Attorney General,
Daytona Beach, for Appellee.

GRIFFIN, J.

Appellant, Marquis Stokes ["Stokes"], appeals the summary denial of his rule 3.800(a) motion. The trial court denied the motion because the claims were not cognizable in a rule 3.800(a) motion. This decision was correct for all claims except one.

Stokes asserts that the written sentence is in conflict with the oral pronouncement of his sentence. According to Stokes, the trial court orally pronounced a sentence of eight years of prison, followed by five years of probation, with early termination of probation after two years and no designation as an habitual felony

offender ["HFO"]. Eight days later, however, the trial court amended Stokes' sentence to designate him as a HFO and provided that early termination was to be permitted after two and one-half years probation.

The State acknowledges in its response that this claim is cognizable in a rule 3.800(a) motion, but notes that Stokes has not attached essential portions of the record, including the sentencing hearing transcript. We remand for the trial court to consider this claim on the merits. If the requisite documents, such as the sentencing hearing transcript, are not in the record, Stokes' motion should be denied without prejudice to allow Stokes to file a legally sufficient amended motion. See *Beard v. State*, 27 So. 3d 186, 188 (Fla. 5th DCA 2010).

AFFIRMED in part; REVERSED in part; and REMANDED.

ORFINGER, C.J., and TORPY, J., concur.