

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

FELIX ANTONIO ORELLANA,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-3292

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed May 4, 2009.

An appeal from the Circuit Court for Gadsden County.
Thomas H. Bateman, III, Judge.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for
Appellant.

Bill McCollum, Attorney General, and Philip W. Edwards, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant appeals an order summarily denying a motion under Florida
Rule of Criminal Procedure 3.850. The appellant's motion, timely filed pursuant

to State v. Green, 944 So. 2d 208, (Fla. 2006), alleges that the trial court did not inform the appellant of the possibility of deportation. Because the trial transcripts are no longer available, the lower court relied on a written plea agreement in summarily denying the appellant's claim. Where an appellant alleges that the trial court did not inform the appellant of the possible deportation consequences of a plea, a written plea agreement is no substitute for a plea colloquy. See Perriello v. State, 684 So. 2d 258, 259-60 (Fla. 4th DCA 1996).

Because the record now before us fails to conclusively refute the appellant's claim, we reverse the order and remand for further proceedings.

REVERSED AND REMANDED for further proceedings.

WOLF, KAHN, and VAN NORTWICK, JJ., CONCUR.