

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

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

GEORGE C. SNEATHEN,

Appellant,

v.

Case No. 5D14-962

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 7, 2014

3.850 Appeal from the Circuit Court
for Orange County,
Janet C. Thorpe, Judge.

George C. Sneathen, Crestview, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

George C. Sneathen appeals the summary denial of his motion, alleging ineffective assistance of counsel filed under Florida Rule of Criminal Procedure 3.850. We affirm the trial court's order as to claims one through seven. We reverse as to claim eight as the record does not conclusively refute Sneathen's claim. The trial court concluded that contrary to Sneathen's contention, there was no evidentiary basis to allow the jury to

consider the child's prior history of sexual activity. That may be correct, but we cannot reach that conclusion based on the limited record before us and in light of the holdings in Hammond v. State, 660 so. 2d 1152 (Fla. 2d DCA 1995), and Dixon v. State, 605 So. 2d 960 (Fla. 2d DCA 1992). Therefore, while we express no opinion on the merits of claim eight or the admissibility of testimony proffered by Sneathen, we believe Sneathen has demonstrated entitlement to an evidentiary hearing on this claim.

AFFIRMED in part; REVERSED in part; REMANDED.

SAWAYA, ORFINGER and COHEN, JJ., concur.