

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

CRAIG JOHNSON,

Appellant,

v.

Case No. 5D16-1095

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed July 22, 2016

3.850 Appeal from the Circuit
Court for Citrus County,
Richard A. Howard, Judge.

Craig Johnson, Perry, pro se.

No Appearance for Appellee.

PER CURIAM.

Craig Johnson appeals the second order summarily denying his rule 3.850 motion for postconviction relief, which was remanded back to the trial court for reconsideration of part of claim three alleged in the motion. See Johnson v. State, 186 So. 3d 629 (Fla. 5th DCA 2016). On remand the trial court denied the claim and attached a jury instruction, which does not conclusively refute the claim. Accordingly, we reverse the order under review and remand this case for an evidentiary hearing.

REVERSED and REMANDED.

SAWAYA, EVANDER and COHEN, JJ., concur.