

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

MICHAEL BYNOE,

Appellant,

v.

Case No. 5D21-1400
LT Case No. 14-269-CF

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 17, 2021

3.850 Appeal from the Circuit Court
for Putnam County.
Patti A. Christensen, Judge.

Michael Bynoe, East Palatka, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Kellie A. Nielan,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Michael Bynoe appeals the postconviction court's order summarily denying his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief. We affirm the order under review, except as to Bynoe's

claim that his trial counsel was ineffective for failing to call the minor victim's pediatrician, Dr. Tiu, to testify at trial.¹

We conclude that the record attachments to the denial order do not conclusively refute this claim. *See Peede v. State*, 748 So. 2d 253, 257 (Fla. 1999) (providing that to uphold a circuit court's summary denial of a rule 3.850 claim, the claim "must be either facially invalid or conclusively refuted by the record"). The postconviction court is directed either to attach additional records to its denial order that conclusively refute the claim or to hold an evidentiary hearing.

AFFIRMED, in part; REVERSED, in part; REMANDED, with directions.

LAMBERT, C.J., COHEN and SASSO, JJ., concur.

¹ Bynoe was convicted of neglect of a child causing great bodily harm. The victim is Bynoe's then-infant daughter.