

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

JANUARY TERM 2011

MARK MIKULSKI,

Appellant,

v.

Case No. 5D10-625

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 15, 2011

3.850 Appeal from the Circuit Court
for Brevard County,
Robert T. Burger, Judge.

James S. Purdy, Public Defender, and
Ailene S. Rogers, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General, Daytona
Beach, for Appellee.

GRIFFIN, J.

Mark Mikulski ["Mikulski"] appeals the trial court's denial of his 3.850 motion for post-conviction relief in which he asserted nine grounds for relief. Mikulski argues that the trial court erred by summarily denying grounds one, two, three, four, seven, and eight. He also argues that the trial court erred by denying grounds five and six after an evidentiary hearing. We find error only in the summary denial of the claims concerning an alleged conflict of interest based on the claim that Mikulski's counsel also

represented the State's key witness, Cornelius, and a witness for the defense, Martinez. The record does not conclusively refute Mikulski's claim that he received ineffective assistance of counsel. Indeed, it is unclear whether counsel personally represented these three men or whether it was the office of the Public Defender. Nor is it clear what the nature of the representation was or why or when it occurred. An evidentiary hearing will be required to determine whether there was an actual conflict, and we remand for that purpose. In all other respects, the appealed order is affirmed.

AFFIRMED in part; REVERSED in part; and REMANDED.

SAWAYA and PALMER, JJ., concur.