

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

ROBERT FITZGERALD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D04-2647

Opinion filed January 24, 2005.

An appeal from an order from the Circuit Court for Alachua County.
Larry G. Turner, Judge.

Robert Fitzgerald, Pro Se.

No appearance for Appellee.

PER CURIAM.

This is an appeal from the trial court's summary denial of Appellant's postconviction motion filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the trial court failed to attach portions of the record to conclusively refute Appellant's claim of misadvice, we reverse. We affirm all other issues raised on appeal without further discussion.

In his motion, Appellant made a facially sufficient claim that his counsel misadvised him about the consequences of testifying. Jennings v. State, 685 So. 2d 879 (Fla. 2d DCA 1996). The trial court improperly relied on extra-record information to deny Appellant's motion without an evidentiary hearing. Mims v. State, 672 So. 2d 662 (Fla. 1st DCA 1996). We, therefore, reverse the trial court's summary denial of this claim and remand either for further attachment of record portions to refute Appellant's claim or for an evidentiary hearing.

AFFIRMED, in part, REVERSED, in part, and REMANDED.

BENTON, LEWIS and THOMAS, JJ., CONCUR.