

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

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

DOUGLAS STEWART,

Appellant,

v.

CASE NO. 1D04-4051

STATE OF FLORIDA,

Appellee.

Opinion filed May 27, 2005.

An appeal from the Circuit Court for Nassau County.
Robert M. Foster, Judge.

James E. Felman; and Katherine Earle Yanes of Kynes, Markman & Felman, P.A.,
Tampa, for Appellant.

Charlie Crist, Attorney General, Tallahassee, for Appellee.

BROWNING, J.

Reversal is required in this appeal from the summary denial of Appellant's
postconviction motion for relief under Florida Rule of Criminal Procedure 3.850,
because the trial court failed to attach portions of the record that refute Appellant's

claims. See, e.g., Johnson v. State, 840 So. 2d 369 (Fla. 1st DCA 2003). Although the trial court found that any error was harmless, this Court will not presume harmlessness. See Banks v. State, 673 So. 2d 937 (Fla. 1st DCA 1996). On remand, the trial court is directed to attach the portions which refute the claims. In the alternative, the trial court may hold an evidentiary hearing on Appellant's claims.

REVERSED AND REMANDED.

WOLF, C.J.; and DAVIS, J., CONCUR.