

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

JAMES WARE,
Appellant,

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

v.

CASE NO. 1D06-0459

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed July 18, 2006.

An appeal from the Circuit Court for Madison County.
James Roy Bean, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Appellant seeks review of the trial court's summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.850 seeking post-conviction relief. In his motion, appellant alleged that he had a deal with the state that, if he pled guilty and testified against his co-defendant, he would be sentenced to time served; that although he did testify against his co-defendant, at his sentencing the state reneged on its agreement, resulting in a five-year probationary sentence; that his counsel was

ineffective because counsel failed to object or explain to him that he was entitled to withdraw his plea; and that, had he known his rights, he would have withdrawn his plea. Because the motion stated a facially sufficient claim for relief and the trial court's order summarily denying the motion failed to attach any portion of the record demonstrating that the claim was without merit, we reverse and remand. On remand, if the trial court again concludes that the record demonstrates that appellant's claim is without merit, it shall attach to its order denying relief those portions of the record that do so; otherwise, it shall hold a hearing.

KAHN, C.J., WEBSTER and HAWKES, JJ., concur.