

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

THOMAS SCOTT KRESGE,

Appellant,

v.

CASE NO. 1D09-2746

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 10, 2009.

An appeal from the Circuit Court for Duval County.
Linda F. McCallum, Judge.

William J. Sheppard, D. Gray Thomas and Bryan E. DeMaggio, Sheppard, White,
Thomas & Kachergus, P.A., Jacksonville, for Appellant.

Bill McCollum, Attorney General and Donna A. Gerace, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Thomas Kresge appeals the trial court's summary denial of his
postconviction motion alleging that counsel ineffectively failed to file a motion to
suppress his confession. We reverse.

Following an officer's warrantless entry into the appellant's residence, the appellant confessed to unlawful sexual activity with a minor. At trial, defense counsel failed to file a motion to suppress the appellant's confession as fruit of the poisonous tree. See State v. Rheiner, 297 So. 2d 130, 134-35 (Fla. 2d DCA 1974). The appellant argues that the outcome of his case would have been different had counsel filed the motion. As the State concedes, the trial court did not attach record portions conclusively refuting the appellant's claim.

Because the record now before us fails to contain the required showing, we reverse the trial court's order and remand for further proceedings. If the trial court again enters an order summarily denying the postconviction motion, the court shall attach record excerpts conclusively showing that the appellant is not entitled to any relief.

REVERSED AND REMANDED for further proceedings.

BARFIELD and CLARK, JJ., and BROWNING, JR., EDWIN B., SENIOR JUDGE, CONCUR.