

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

MICHAEL VINES,

Appellant,

v.

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

CASE NO. 1D11-0361

STATE OF FLORIDA,

Appellee.

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Opinion filed July 18, 2011.

An appeal from the Circuit Court for Duval County.

L. P. Haddock, Judge.

Michael Vines, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Christine Ann Guard, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Michael Vines appeals the summary denial of his Rule 3.850 motion claiming ineffective assistance of counsel on six grounds. We affirm, without discussion, the trial court's denial of grounds 2, 5 and 6. But we reverse the denial of grounds 1, 3 and 4 because the court erroneously relied on defense counsel's affidavit to refute Vines's claims. *See Morris v. State*, 624 So. 2d 864, 865 (Fla.

2d DCA 1993) (“[A]ffidavits generally cannot substitute for live testimony, subject to cross-examination, in proceedings under Florida Rule of Criminal Procedure 3.850.”); *Robinson v. State*, 516 So. 2d 20, 20 (Fla. 1st DCA 1987) (stating that trial court could not rely on defense counsel’s affidavit in denying postconviction motion alleging ineffective assistance of counsel). We remand for the trial court either to attach parts of the record refuting Vines’s claims or to hold an evidentiary hearing. *See generally Penn v. State*, 941 So. 2d 466 (Fla. 1st DCA 2006).

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

THOMAS, WETHERELL, and MARSTILLER, JJ., CONCUR.