

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

KYLE RAY HIMES,

Appellant,

v.

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

CASE NO. 1D11-2896

STATE OF FLORIDA,

Appellee.

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Opinion filed March 14, 2012.

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

Frank J. Tassone, Jacksonville, for Appellant.

Pamela Jo Bondi, Attorney General; Ralph F. Guerra and Edward C. Hill, Jr.,  
Assistant Attorneys General, Tallahassee, for Appellee.

PER CURIAM.

Kyle Ray Himes appeals the circuit court's summary denial of his amended motion for post-conviction relief filed pursuant to Florida Rule of Criminal

Procedure 3.850. Himes raised seven claims in the amended motion. Without attaching portions of the record, or holding an evidentiary hearing, the circuit court denied Himes' claims.

Himes raises seven issues on appeal, arguing that the circuit court erred in summarily denying his claims without attaching portions of the record or holding an evidentiary hearing. After reviewing Himes' brief, this court issued an order pursuant to Toler v. State, 493 So. 2d 489 (Fla. 1st DCA 1986), directing the state to file a response addressing the claims raised by Himes in this appeal. The state filed a Response to the Toler Order, conceding that the order on appeal should be remanded for the circuit court to attach portions of the record or to hold an evidentiary hearing. We agree. Accordingly, we reverse the order on appeal and remand for the trial court to attach portions of the record or to hold an evidentiary hearing for all claims except the fifth claim.<sup>1</sup>

BENTON, C.J., ROWE, and RAY, JJ., CONCUR.

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<sup>1</sup> The circuit court sufficiently stated its rationale for denying this claim. See Diaz v. Dugger, 719 So. 2d 865, 867 (Fla. 1998).