

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D19-106

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MICHAEL JOSEPH NILIO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

December 19, 2019

PER CURIAM.

Michael Joseph Nilio appeals an order summarily denying his Rule 3.850 motion for postconviction relief as successive. Because Nilio's motion raised a claim of newly discovered evidence and alleged a facially sufficient reason for his failure to assert the instant claim in a prior motion, the postconviction court erred by denying his motion as successive without making specific findings or attaching any portion of the record to support its ruling. *See Fla. R. Crim. P. 3.850(h)(2)* (providing that an order dismissing a postconviction motion as successive shall be accompanied by "a copy of that portion of the files and records necessary to support the court's ruling"). As properly conceded by the State, we must reverse and remand for the postconviction court to make the

required findings and attach supporting records, if possible, or to consider Nilio's motion on the merits.

REVERSED and REMANDED.

RAY, C.J., and LEWIS and BILBREY, JJ., concur.

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*Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.*

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Michael Joseph Nilio, pro se, Appellant.

Ashley Moody, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.