

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

RICHARD HODGES,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-1802

[January 24, 2007]

PER CURIAM.

Richard Hodges appeals the summary denial of his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850, and the order denying his motion for rehearing. We determine the appeal is timely.

In the sixth ground of his motion, Hodge claimed his trial counsel was ineffective for failing to object to the trial court's use of shackles on him during his trial. In his sworn motion for rehearing, he alleged that he stood in full view of the jury panel, for identification purposes, while shackled. The state asserted only that the record did not support Hodges' claim; none of the attachments to the order of denial refuted it.

Accordingly, we reverse and remand for further proceedings as to this claim. *See Falias v. State*, 901 So. 2d 1024 (Fla. 4th DCA 2005); *Miller v. State*, 852 So. 2d 904, 905 (Fla. 4th DCA 2003); *Cramer v. State*, 843 So. 2d 372 (Fla. 2d DCA 2003). We affirm as to the remaining grounds for relief.

Affirmed in part, Reversed in part, and Remanded.

STONE, KLEIN and TAYLOR, JJ., concur.

* * *

Appeal of orders denying rule 3.850 motions from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner,

Judge; L.T. Case No. 01-8239 CF10A.

Richard Hodges, Polk City, pro se.

Bill McCollum, Attorney General, Tallahassee, and Joseph A. Tringali, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.