

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

LARSEN D. ERICKSON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-3346

[June 27, 2007]

PER CURIAM.

Appellant, Larsen Erickson, appeals the trial court's summary denial of his petition for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850 and raises two issues. We affirm on one of the grounds raised and reverse and remand the trial court's summary denial of Ground 1.

Ground 1 alleges that trial counsel rendered ineffective assistance of counsel by failing to investigate the evidence which showed that the drugs appellant was accused of trafficking in had been tampered with. The record before this court does not refute appellant's claim that the drugs which he allegedly purchased and which were taken into evidence at the scene are not the same drugs that were submitted to the crime laboratory for analysis. On remand, the trial court shall either provide record attachments conclusively refuting appellant's claim or conduct an evidentiary hearing.

Affirmed In Part; Reversed and Remanded In Part.

KLEIN, TAYLOR and HAZOURI, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Peter M. Weinstein, Judge; L.T. Case No. 02-5580 CF10A.

Ana M. Davide of Law Offices of Ana M. Davide P.A., Miami, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing