

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

MONTE D. BROWN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-4309

[May 30, 2007]

PER CURIAM.

Monte Brown appeals the trial court's denial of his motion for postconviction relief under Florida Rule of Civil Procedure 3.850. We affirm in all respects except one, that being the trial court's denial of the motion as to Ground 5.

We reverse and remand the denial of Brown's motion as to Ground 5 alleging that trial counsel rendered ineffective assistance by advising Brown not to take the stand even after the trial court indicated that his testimony would likely be necessary to warrant a justifiable use of deadly force jury instruction, which was not ultimately given. Because the record before this Court does not refute Brown's claims of self-defense or reveal the nature of trial counsel's advice to him regarding taking the stand, we reverse and remand to the trial court for reconsideration of Ground 5 of Brown's Rule 3.850 motion. On remand, the trial court shall either provide record attachments conclusively refuting Brown's claim or conduct an evidentiary hearing.

Affirmed In Part; Reversed and Remanded In Part.

GUNTHER, FARMER and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner, Judge; L.T. Case No. 00-0425 CF10A.

Monte D. Brown, Century, pro se.

No appearance required for appellee.

Not final until disposition of timely filed motion for rehearing