

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**WILLOGHBY HALL,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D07-2246

[ January 9, 2008 ]

PER CURIAM.

Willoghby Hall appeals the trial court's order summarily denying his Florida Rule of Criminal Procedure 3.850 motion. We affirm the denial of appellant's first claim without discussion, and reverse the trial court's summary denial of appellant's second claim.

In his second claim appellant argued that trial counsel was ineffective for failing to argue in a motion to suppress that defective *Miranda*<sup>1</sup> warnings were given. Appellant specifically alleged that he was not advised that he had the right to have a lawyer present *during* questioning. The warnings given to appellant appear to be the same as those given in *Roberts v. State*, 874 So. 2d 1225 (Fla. 4th DCA 2004), *rev. denied sub. nom.*, *State v. West*, 892 So. 2d 1014 (Fla. 2005). Appellant's claim is legally sufficient, and the trial court failed to attach records that conclusively refute his allegations of ineffective assistance of counsel. *See Burgess v. State*, 965 So. 2d 1239 (Fla. 4th DCA 2007); *Louis v. State*, 948 So. 2d 869 (Fla. 4th DCA 2007); *Anthony v. State*, 927 So. 2d 1084 (Fla. 4th DCA 2006); *Stancle v. State*, 917 So. 2d 911 (Fla. 4th DCA 2005) (finding appellant's claim trial counsel was ineffective for failing to file a motion to suppress on the basis that the *Miranda* warnings were deficient under *Roberts* to be legally sufficient).

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

Accordingly, we reverse and remand either for the attachment of portions of the record that conclusively refute this claim or for an evidentiary hearing.

STONE, POLEN and TAYLOR, JJ., concur.

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Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Eileen M. O'Connor, Judge; L.T. Case No. 02-12756 CF10A.

Willoghby Hall, Blountstown, pro se.

Bill McCollum, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing***