

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EDGAR VILLAFUERTE GARCIA,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D06-1125

Opinion filed November 17, 2006.

Appeal from the Circuit Court for Polk
County; Dick Prince and Roger Allan Alcott,
Judges.

Edgar V. Garcia, pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Helene S. Parnes, Assistant
Attorney General, Tampa, for Appellee.

SALCINES, Judge.

Edgar Villafuerte Garcia appeals the denial of his motion for
postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Garcia
raised three grounds of error. We affirm the denial of grounds one and two without
further comment. We reverse the denial of ground three and remand for further
proceedings.

In ground three, Garcia asserted that trial counsel rendered ineffective assistance when he failed to utilize peremptory challenges at jury selection to strike potential jurors whose ability to be impartial allegedly was questionable. Garcia's motion alleged potential prejudice in three jurors and argued how their seating on the jury panel resulted in an unfair trial. See Paredes v. State, 921 So. 2d 32, 34 (Fla. 3d DCA 2006). In summarily denying relief on this ground, the trial court found that there was no legal merit to the claim, but did not provide any record attachments to refute Garcia's claim or to support its ruling.

Accordingly, we reverse that portion of the order denying relief as to ground three. On remand, the trial court may again summarily deny the claim only if it includes record attachments that conclusively refute Garcia's allegations of ineffective assistance of counsel. Otherwise, an evidentiary hearing will be necessary.

Affirmed in part, reversed in part, and remanded.

FULMER, C.J., and SILBERMAN, J., Concur.