

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JORGE L. ROSARIO,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D04-4561

Opinion filed June 10, 2005.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court for
Polk County; Susan W. Roberts,
Judge.

CANADY, Judge.

Jorge Rosario appeals the summary denial of his postconviction relief motion filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm Rosario's second claim without comment. Because Rosario's first claim is not conclusively refuted by the record attached to the trial court's denial order, we reverse the denial of that claim. See Fla. R. Crim. P. 3.850(d).

Rosario contends that his no contest plea was involuntary because the trial court failed to conduct a plea colloquy that met the requirements of Florida Rule of

Criminal Procedure 3.172(c). He claims that he was therefore unaware of his rights and that he would not have entered the plea if he had been advised of his rights. In denying this claim, the trial court attached a copy of the transcript of the proceeding at which the sentence was imposed on Rosario. The transcript does not reflect that a plea was entered at the hearing. The trial court erroneously concluded that Rosario's claim was conclusively refuted by the transcript of the sentencing hearing.

We reverse the trial court's denial of claim one. On remand, the trial court shall either attach those portions of the record conclusively refuting Rosario's first claim or conduct an evidentiary hearing.

Affirmed in part, reversed in part, and remanded.

FULMER and KELLY, JJ., Concur.