

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DAMIAN SIMMS,

Appellant,

v.

Case No. 5D15-2033

STATE OF FLORIDA,

Appellee.

Opinion filed April 15, 2016

3.850 Appeal from the Circuit Court
for Osceola County,
Jon B. Morgan, Judge.

Damian Simms, Okeechobee, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

Damian Simms ("Appellant") appeals the trial court's summary denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief. Appellant argues defense counsel provided ineffective assistance by: (1) abandoning a self-defense theory; (2) failing to investigate and call various witnesses; and (3) misadvising him with regard to two plea offers—the first for 15 years and the second for 40 years.

We find, and the State properly concedes, that the attached portions of the record do not conclusively refute Appellant's claims. We reverse and remand for either attachment of record excerpts conclusively refuting those claims or for an evidentiary hearing. With respect to claim 3, we find that the record conclusively demonstrates the 15-year plea offer never materialized. Therefore, we remand on claim 3 only as it pertains to the 40-year plea offer. We note that an evidentiary hearing may be necessary unless "it is so obvious from the face of the record that trial counsel's strategy . . . is very clearly a tactical decision well within the discretion of counsel." Hannon v. State, 941 So. 2d 1109, 1138 (Fla. 2006) (citing State v. Williams, 797 So. 2d 1235, 1237-38 (Fla. 2001)).

REVERSED and REMANDED with INSTRUCTIONS.

SAWAYA, WALLIS, and EDWARDS, JJ., concur.