

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

CRAIG JOHNSON,

Appellant,

v.

Case No. 5D15-3328

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed March 4, 2016

3.850 Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Craig Johnson, Perry, pro se.

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

PER CURIAM.

Craig Johnson (“Johnson”) was convicted of possession of oxycodone, possession of cocaine with intent to sell, possession of cannabis, and possession of drug paraphernalia. Johnson appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Johnson raises several claims, and we affirm as to each, except part of his third claim. In claim three, Johnson

alleges in part that his trial counsel was ineffective for failing to object to erroneous jury instructions on constructive possession because the trial court failed to instruct the jury that “if a person does not have exclusive possession of a controlled substance, knowledge of its presence may not be inferred or assumed.” See Fla. St. Jury Instr. (Crim.) 25.2 (2012). As to that part of claim three, we reverse and remand this case for the trial court to attach portions of the record that conclusively refute the claim or to hold an evidentiary hearing. As to the remainder of the allegations contained in claim three, we affirm.

AFFIRMED in part; REVERSED in part; REMANDED.

SAWAYA, TORPY and BERGER, JJ., concur.