

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

DONALD R. LEGRANDE,

Appellant,

v.

Case No. 5D16-1606

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 9, 2016

3.850 Appeal from the Circuit Court
for Orange County,
Keith A. Carsten, Judge.

Donald R. Legrande, Lowell, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kaylee D. Tatman,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Donald R. LeGrande appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm as to Grounds One, Four, and Five. However, because the record does not conclusively refute LeGrande's claim that counsel was ineffective for failing to file a motion for new trial and failing to request a limiting jury instruction indicating that the "principals" instruction did

not apply to conspiracy, we reverse the summary denial of Grounds Two and Three and remand for attachment of portions of the record conclusively refuting those claims or for an evidentiary hearing. See Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000) (“[A] defendant is entitled to an evidentiary hearing on a postconviction relief motion unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient.” (citing Maharaj v. State, 684 So. 2d 726 (Fla. 1996))). As two of LeGrande’s claims require reversal for attachment of the record or evidentiary hearing, we also remand Ground Six, which alleges cumulative error, for further consideration.

AFFIRMED in part, REVERSED in part, and REMANDED.

PALMER, TORPY and BERGER, JJ., concur.