

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

DON EVAN CIOETA,

Appellant,

v.

Case No. 5D16-562

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 18, 2016

3.850 Appeal from the Circuit Court
for Brevard County,
Jeffrey Mahl, Judge.

Don E. Cioeta, Lake City, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Marjorie Vincent-Tripp,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant, Don Cioeta, seeks review of the order summarily denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm as to all claims except claims two and seven. In claim two, Cioeta contends that his trial counsel was ineffective for failing to file a motion to suppress Cioeta's statements to the police. In claim seven, Cioeta argues that his trial counsel was ineffective for failing to

impeach a witness with prior inconsistent statements. Because these two claims are not refuted by the record, it was error for the trial court to summarily deny them. Therefore, we reverse that part of the order under review denying these two claims and remand for an evidentiary hearing or attachment of portions of the record that conclusively refute the claims.

AFFIRMED in part; REVERSED in part; REMANDED.

LAWSON, C.J., SAWAYA and WALLIS, JJ., concur.