

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

FREDERICK ADDISON,

Appellant,

v.

Case No. 5D17-2692

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 22, 2017

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

Frederick Addison, Bristol, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Nora Hutchinson Hall,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Frederick Addison appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the record does not conclusively refute Addison's claim that counsel was ineffective for failing to depose or call the victim to testify for mitigation purposes at his sentencing on the violation of probation, we reverse the order summarily denying his motion and remand for

attachment of portions of the record conclusively refuting the claim 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))).

REVERSED and REMANDED.

ORFINGER, BERGER and WALLIS, JJ., concur.