

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

MARSHALL S. VAUGHAN,

Appellant,

v.

Case No. 5D17-316

STATE OF FLORIDA,

Appellee.

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Opinion filed June 23, 2017

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

Marshall S. Vaughan, Raiford, pro se.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Pamela J. Koller,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Marshall Vaughan appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We reverse.

Vaughan pleaded nolo contendere to felony battery and was placed on five years of drug offender probation. About six months later, Vaughan violated his probation and was sentenced to ten years in prison. Vaughan then timely filed a motion for

postconviction relief, asserting, among other things, a claim of newly discovered evidence. The postconviction court summarily denied relief, concluding that the evidence—an affidavit from a recanting witness—was not newly discovered because it was in Vaughan’s possession after his original plea, but before he pleaded to the violation of probation.

Vaughan’s newly discovered evidence claim should have been measured from when he entered his original plea, not the subsequent violation of probation proceeding. Thus, we reverse and remand to the postconviction court for further consideration.

REVERSED and REMANDED for further proceedings.

ORFINGER, LAMBERT and EDWARDS, JJ., concur.