

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

MANOLO MARTINEZ,

Appellant,

v.

Case No. 5D17-2461

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed June 15, 2018

3.850 Appeal from the Circuit Court
for Orange County,
Marc L. Lubet, Judge.

Rupak R. Shah, of Escobar & Associates,
P.A., Tampa, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Lori N. Hagan, Assistant
Attorney General, Daytona Beach, for
Appellee.

PER CURIAM.

Manolo Martinez 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 Two, Three, and Four. However, because the record does not conclusively refute Martinez's claim that counsel was ineffective for failing to file a motion to suppress the wiretap of his phone conversations, we reverse the summary denial of Ground One and remand for

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

AFFIRMED in part; REVERSED in part; and REMANDED.

SAWAYA, BERGER and LAMBERT, JJ., concur.