

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

DONTREVIUS BYRON,

Appellant,

v.

Case No. 5D17-3724

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed April 20, 2018

3.850 Appeal from the Circuit
Court for Brevard County,
Robin C. Lemonidis, Judge.

Dontrevius Byron, Jasper, pro se.

No Appearance for Appellee.

PER CURIAM.

Appellant appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850, alleging three grounds for relief. We find that the record does not conclusively refute part of Appellant's first ground for relief. As part of ground one, Appellant claims that trial counsel told him that he would not be sentenced to a longer sentence than his codefendants. Although the written plea

form was attached to the postconviction court's order,¹ its standard language, stating, "No person has made any promises to me that induced me to enter this plea," is insufficient to refute Appellant's claim of affirmative misadvice. "[A] general question about promises made in exchange for a plea is insufficient to refute an allegation of specific misadvice by counsel about the length of a sentence." Collazo v. State, 8 So. 3d 1273, 1274 (Fla. 5th DCA 2009) (citations omitted); see Lamkin v. State, 215 So. 3d 640, 641 (Fla. 5th DCA 2017); Ostane v. State, 73 So. 3d 335, 335 (Fla. 5th DCA 2011). Accordingly, we reverse the summary denial of this portion of ground one and remand for the postconviction court to either attach additional portions of the record that conclusively refute the claim or hold an evidentiary hearing. We affirm the summary denial as to the remainder of Appellant's ground one as well as grounds two and three in their entirety.

AFFIRMED in Part; REVERSED in Part, and REMANDED for Further Proceedings.

ORFINGER, WALLIS and LAMBERT, JJ., concur.

¹ We note that the plea colloquy transcript was not included in the record.