

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

ANTHONY S. DESTEFANO,

Appellant,

v.

Case No. 5D18-1521

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 17, 2018

3.850 Appeal from the Circuit Court
for Osceola County,
Elaine A. Barbour, Judge.

Anthony S. Destefano, South Bay, pro se.

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

PER CURIAM.

Anthony S. DeStefano 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 through Five. However, because the record does not conclusively refute DeStefano's claim that counsel was ineffective for failing to object to the prosecutor's comments on the law applicable to his sentencing, 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.

ORFINGER, BERGER, and EISNAUGLE, JJ., concur.