

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

XAVIER ARSENIO JOHNSON,

Appellant,

v.

Case No. 5D18-1854

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 7, 2018

3.850 Appeal from the Circuit
Court for Orange County,
Dan Traver, Judge.

Robert Wesley, Public Defender and
Robert Thompson Adams, IV,
Assistant Public Defender, Orlando,
for Appellant.

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

PER CURIAM.

We reverse the summary denial of Appellant's Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief. Appellant filed a facially sufficient motion asserting that he was incompetent to proceed when he entered a plea in 2012. The post-conviction court summarily denied the motion based upon court minutes from separate cases from

2016, determining that Appellant's competency had been restored. These records do not conclusively refute Appellant's contention that he was incompetent in 2012.

Accordingly, we remand with instructions that the lower court either grant the relief, afford to Appellant an evidentiary hearing on his claim, or attach different records that conclusively refute the claim.

REVERSED AND REMANDED.

ORFINGER, TORPY and LAMBERT, JJ., concur.