

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

PAUL FREDERICK MAGEE,

Appellant,

v.

Case No. 5D18-839

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 31, 2018

3.850 Appeal from the Circuit
Court for Orange County,
John Marshall Kest, Judge.

James S. Purdy, Public Defender, and
Sean Kevin Gravel, Assistant Public
Defender, Daytona Beach, for Appellant.

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

PER CURIAM.

Paul Frederick Magee appeals the final order entered by the trial court summarily denying his motion seeking post-conviction relief, filed pursuant to rule 3.850 of the Florida Rules of Criminal Procedure. The motion raised four grounds for relief, and all were denied by the trial court. On appeal, Magee challenges the summary denial of the first and third grounds, arguing they were facially sufficient and warranted an evidentiary hearing. We affirm

as to the court's denial of the first ground; however, we reverse as to the denial of the third ground. On remand, the court must either conduct an evidentiary hearing or attach portions of the record which conclusively refute Magee's ineffective assistance of counsel claim raised in ground three. See Nelson v. State, 73 So. 3d 77, 84 (Fla. 2011).

AFFIRMED in part; REVERSED in part; REMANDED.

PALMER, LAMBERT and EDWARDS, JJ., concur.