

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

JASON OSBORN,

Appellant,

v.

Case No. 5D18-3039

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 1, 2019

3.850 Appeal from the Circuit Court
for Citrus County,
Mark Yerman, Judge.

Jason Osborn, Malone, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Kaylee D. Tatman,
Assistant Attorney General, Daytona
Beach, for Appellee.

WALLIS, J.

Appellant appeals the summary denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief, in which he raised six grounds of alleged error. We affirm the portion of the order that summarily denied grounds 2, 3, 4, and 6. However, we reverse the portion of the order that denied grounds 1 and 5, and remand for further proceedings.

In ground 1 of his postconviction motion, Appellant alleged that his attorney was ineffective for failing to adequately prepare his case and that his attorney knew about three witnesses who would have supported his motion to suppress evidence gathered during a traffic stop by Deputy Hyrc. Appellant specifically alleged that his attorney knew that Gerald Combs, a private investigator, would have contradicted Deputy Hyrc's claim that he had a visual on Appellant's car before the stop. Appellant additionally alleged that his attorney knew that two other witnesses, Kimberly Ramirez and Brandy Jenkins, would have impeached Deputy Hyrc's testimony that he was speeding. In ground 5, Appellant alleged that his attorney was ineffective for failing to depose Officer Pruitt, who testified to inculpatory statements that Appellant denies making, and for failing to discover the names of other officers present during his hospitalization after his arrest.

It was error for the trial court to summarily deny grounds 1 and 5 of Appellant's motion because nothing in the attached record conclusively refutes the proposed testimony from Combs, Ramirez, and Jenkins, or the allegations in ground 5. See Burt v. State, 225 So. 3d 413 (Fla. 5th DCA 2017) (reversing order summarily denying motion for postconviction relief and remanding for trial court to either attach records conclusively refuting grounds raised in motion or to hold evidentiary hearing on those grounds); see also Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000) (reiterating general proposition that "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"). Therefore, we reverse and remand grounds 1 and 5 for reconsideration by the postconviction court.

AFFIRMED in Part; REVERSED in Part; and REMANDED.

ORFINGER and EISNAUGLE, JJ., concur.