

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

TED M. KITCHEN,

Appellant,

v.

Case No. 5D19-1054

STATE OF FLORIDA,

Appellee.

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Opinion filed December 6, 2019

3.850 Appeal from the Circuit Court  
for Marion County,  
R. Gregg Jerald, Judge.

Ted M. Kitchen, Lake City, pro se.

Ashley Moody, Attorney General,  
Tallahassee, and Deborah A. Chance,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Ted M. Kitchen appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Although Kitchen alleged several reasons for why his plea was involuntary, he only appeals the summary denial of his claim that trial counsel affirmatively misadvised him as to gain time. Because the attached records do not conclusively refute Kitchen's facially sufficient claim that he

entered his plea because trial counsel affirmatively misadvised him regarding his eligibility for gain time, we reverse the summary denial and remand for attachment of portions of the record conclusively refuting his 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))).

REVERSED and REMANDED.

HARRIS and GROSSHANS, JJ., and JACOBUS, B.W., Senior Judge, concur.