

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

MICHAEL NIEMI,

Appellant,

v.

Case No. 5D20-1220

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 16, 2020

3.850 Appeal from the Circuit
Court for Citrus County,
Richard A. Howard, Judge.

Michael Niemi, Crestview, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Allison L. Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Michael Niemi appeals the summary denial of his motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850. Concluding that the record attachments to the postconviction court's denial order do not conclusively refute Niemi's sole claim for relief, we reverse and remand for further proceedings.

Niemi is a sex offender. Section 943.0435(2) and (3), Florida Statutes (2018), required him to report certain activities to the Department of Highway Safety and Motor Vehicles (“Department”) within 48 hours of reporting those same activities to the local sheriff. In charging Niemi, the State alleged that he failed to comply with his reporting requirement to the Department.

With the advice of counsel, Niemi entered a plea of no contest to the charge and was sentenced to 48 months in prison. In his postconviction motion, Niemi alleged that he was arrested before the 48-hour period expired for him to register. He asserts that his trial counsel never informed him that, if true, he would have a defense to the charged crime.

In summarily denying Niemi’s postconviction motion, the trial court focused on matters that were relevant to his alleged probation violation, but not matters relevant to the failing to report/register charge. The trial court did not, and likely could not, from the face of the record, determine what advice the trial counsel provided Niemi. We reverse and remand for either the attachment of documents to conclusively refute Niemi’s claim or an evidentiary hearing.

REVERSED and REMANDED.

ORFINGER, COHEN and EISNAUGLE, JJ., concur.