

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2006

ALBERT JAMES HENLEY,

Appellant,

v.

CASE NO. 5D05-2753

STATE OF FLORIDA,

Appellee.

Opinion filed December 29, 2006

3.850 Appeal from the Circuit
Court for Marion County,
Victor J. Musleh, Judge.

Albert James Henley, Chipley, pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Albert James Henley appeals the summary denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief, which asserted eight claims. We affirm the summary denial with respect to all claims except one. In his second claim, Henley alleged that his trial counsel was ineffective for failing to investigate or call several witnesses whose testimony would have been favorable to the defense. The trial court properly concluded that this claim warranted an evidentiary hearing, and

appointed postconviction counsel for the purpose of aiding Henley at his hearing on this claim. Although the trial court's order of denial as to this claim indicates that the claim was being denied following an evidentiary hearing, the State concedes that no hearing was actually held.

Therefore, we reverse the order of denial with respect to Henley's second claim, and remand for an evidentiary hearing as to the issues raised in that claim only. In all other respects, the summary denial is affirmed.

AFFIRMED IN PART, REVERSED IN PART and REMANDED.

THOMPSON, SAWAYA, and LAWSON, JJ., concur.