

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CARY DWAYNE LINDER,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D03-2280

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 6, 2003.

An appeal from the Circuit Court for Clay County.
Frederic A. Buttner, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, and Elizabeth Fletcher Duffy, Assistant Attorney
General, for Appellee.

PER CURIAM.

Appellant seeks review of the summary denial of his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. The motion alleged ineffectiveness of trial counsel grounded upon allegations of failure to subpoena material witnesses and documents to mitigate the alleged violation of probation. Appellant presented a facially sufficient claim for relief pursuant to Rule 3.850, alleging

how his counsel's performance was deficient and how such conduct prejudiced the outcome of the proceedings. See Strickland v. Washington, 466 U.S. 668, 687-88, 691-92 (1984). Documents attached to the order summarily denying relief do not conclusively demonstrate that appellant is entitled to no relief. Accordingly, we reverse the summary denial, and remand. On remand, if the trial court again concludes that appellant is entitled to no relief, it shall attach portions of the record conclusively so demonstrating. Otherwise, it shall hold an evidentiary hearing.

REVERSED and REMANDED, with directions.

KAHN, WEBSTER and VAN NORTWICK, JJ., CONCUR.