

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

OSCAR THOMAS,

Appellant,

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

v.

CASE NO. 1D03-3125

STATE OF FLORIDA,

Appellee.

Opinion filed June 23, 2005.

An appeal from the Circuit Court for Duval County.
Michael R. Weatherby, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The appellant appeals the trial court's order on his motion filed pursuant to Florida Rule of Criminal Procedure 3.850 following a limited evidentiary hearing. Only one of the appellant's claims warrants discussion and all other issues are affirmed without further comment. The trial court summarily denied the eighth claim of the appellant's motion, finding that it constituted an impermissible attack on the sufficiency of the evidence used to convict him. However, as the state concedes, the

appellant's claim was a facially sufficient allegation of ineffective assistance of trial counsel for failing to object to particular testimony at trial. Therefore, the trial court's summary denial of the appellant's facially sufficient claim without attaching record portions conclusively refuting the appellant's allegation was improper. See Fla. R. Crim. P. 3.850(d); Burke v. State, 855 So. 2d 207 (Fla. 1st DCA 2003). Accordingly, the trial court's order as to the appellant's eighth claim is hereby reversed and the issue is remanded to the trial court for either the attachment of record portions that conclusively refute the appellant's claim or an evidentiary hearing. As to all other issues, the trial court's order is affirmed.

AFFIRMED IN PART; REVERSED IN PART and REMANDED.

BENTON, LEWIS and THOMAS, JJ., CONCUR.