

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

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

PAUL E. O'STEEN,

Appellant,

CASE NO. 1D06-3572

v.

STATE OF FLORIDA,

Appellee.

Opinion filed January 26, 2007.

An appeal from the Circuit Court for Taylor County.
James R. Bean, Judge.

Paul E. O'Steen, pro se, Appellant.

Bill McCollum, Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The Appellant challenges the trial court's order denying his Florida Rule of Criminal Procedure 3.850 motion. The Appellant pled nolo contendere to committing a lewd and lascivious act upon a child and to one count of aggravated child abuse. He

filed the present motion claiming that he is entitled to withdraw his plea based on newly discovered evidence. The trial court declared the Appellant's claim facially insufficient and denied the motion as untimely. The Appellee concedes that Appellant is entitled to relief by way of a remand for either attachment of copies of the record conclusively refuting Appellant's claim or to conduct an evidentiary hearing. We conclude such concession is a proper one. See Jones v. State, 591 So. 2d 911 (Fla. 1991); Johnson v. State, 936 So. 2d 1196 (Fla. 1st DCA 2006); Stephens v. State, 829 So. 2d 945 (Fla. 1st DCA 2002); and Fla. R. Crim. P. 3.850(b). Therefore, we reverse and remand this claim to the trial court to either attach record portions conclusively refuting the Appellant's claim or to conduct an evidentiary hearing.

REVERSED AND REMANDED.

BROWNING, C.J., WOLF and KAHN, JJ., CONCUR.