

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

OTIS SPURGEON,

Appellant,

v.

CASE NO. 1D07-4685

STATE OF FLORIDA,

Appellee.

Opinion filed August 20, 2008.

An appeal from the Circuit Court for Washington County.

Allen L. Register, Judge.

Otis Spurgeon, pro se, Appellant.

Bill McCollum, Attorney General, and Thomas D. Winokur, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant seeks review of the trial court's summary denial of his motion for
postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850.

Appellant claims that his trial counsel was ineffective for failing to move to suppress the appellant's statements to a police officer given without Miranda¹ warnings, misadvising the appellant that he should not testify because if he chose to testify he would lose the right to the final closing argument at trial, and in conceding the appellant's guilt in closing arguments. We affirm as to the denial of appellant's third claim without further discussion. However, because his first two claims are facially sufficient and not conclusively refuted by record attachments, we reverse for further proceedings. See Fla. R. Crim. P. 3.850(d).

Accordingly, we affirm in part, reverse in part, and remand.

BARFIELD, ALLEN, and THOMAS, JJ., CONCUR.

¹Miranda v. Arizona, 384 U.S. 436 (1966).