

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

ROY M. JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____ /

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

CASE NO. 1D11-6179

Opinion filed February 5, 2013.

An appeal from the Circuit Court for Duval County.
Linda F. McCallum, Judge.

Roy M. Johnson, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Anne C. Conley, Assistant Attorney
General, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

The lower court denied appellant's timely motion for post-conviction relief raising eight grounds, filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm Issue I without comment, denying grounds 2, 5, 7, and 8. We reverse and remand Issues II and III for further proceedings. The state has conceded error.

As to Issue II, the lower court erred as a matter of law by concluding that the portions of the record attached to the final order conclusively established that defendant was not entitled to relief on ground 4 below. See Pennington v. State, 34 So. 3d 151 (Fla. 1st DCA 2010); Williams v. State, 924 So. 2d 897 (Fla. 1st DCA 2006); Tidwell v. State, 844 So. 2d 701 (Fla. 1st DCA 2003).

As to Issue III, the lower court abused its discretion by failing to address defendant's amended 3.850 motion, which defendant had filed within the two-year time limit. See Spera v. State, 971 So. 2d 754, 759 (Fla. 2007); Sinclair v. State, 959 So. 2d 1277 (Fla. 1st DCA 2007).

Appellant did not appeal the lower court's denial of grounds 1, 3, and 6.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

PADOVANO, MARSTILLER, and SWANSON, JJ., CONCUR.