

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

ANTHONY BARRITT,

Appellant,

v.

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

CASE NO. 1D13-1442

STATE OF FLORIDA,

Appellee.

Opinion filed October 16, 2013.

An appeal from the Circuit Court for Alachua County.
Mark W. Moseley, Judge.

Anthony Barritt, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Charles R. McCoy, Senior Assistant
Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Anthony Barritt, appeals an order summarily denying his motion
and amended motion for postconviction relief filed pursuant to Florida Rule of
Criminal Procedure 3.850. We agree with Appellant that the trial court erred in

denying his claim, labeled as ground five in his amended motion, that trial counsel was ineffective in failing to advise him of a double jeopardy defense as to the charge of possession of child pornography with intent to promote and the charges of possession of child pornography.¹ According to Appellant's motion, he would not have accepted the negotiated plea had he been made aware of the defense. Contrary to the trial court's conclusion that Appellant was barred from raising this claim based upon his negotiated plea, such a plea does not preclude an ineffective assistance of counsel claim based on counsel's alleged failure to challenge the charged offenses on double jeopardy grounds. See Pearson v. State, 867 So. 2d 517, 519 (Fla. 1st DCA 2004). We, therefore, reverse the order as to the denial of this claim and remand with instructions that the trial court either attach portions of the record conclusively refuting the claim or conduct an evidentiary hearing. We otherwise affirm.

AFFIRMED in part; REVERSED in part; and REMANDED with instructions.

LEWIS, C.J., WOLF and MAKAR, JJ., CONCUR.

¹ See §§ 827.071(4) and (5), Fla. Stat. (2006). The offenses allegedly occurred on or about January 7, 2007.