

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-2476

KEITH SHANE BUSH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Levy County.
Mark W. Moseley, Judge.

November 7, 2018

PER CURIAM.

Keith Shane Bush appeals an order summarily denying his postconviction motion filed pursuant to Florida Rule of Criminal Procedure 3.850. In the motion, Bush raised multiple claims attacking his judgment and sentence based on ineffective assistance of trial counsel. All of the claims were summarily denied. On appeal, Bush raises two issues, arguing the postconviction court erred in denying two of his claims: (1) counsel was ineffective for failing to move to suppress the results of a legal blood draw, and (2) counsel was ineffective for failing to relay the State's plea offer or adequately advise him regarding the sentencing guidelines and maximum penalties associated with his charges. We affirm the summary denial of the first issue without further comment. But because the records attached to the order

do not conclusively refute Bush's allegation that counsel may have misadvised him or that counsel failed to inform him of the statutory maximum sentences, he is entitled to relief on the second issue. *See Gray v. State*, 220 So. 3d 464, 466 (Fla. 5th DCA 2017); *Roundtree v. State*, 884 So. 2d 322, 322 (Fla. 2d DCA 2004). We, therefore, reverse the order summarily denying this claim. On remand, the postconviction court is directed to attach portions of the record that conclusively refute it or to hold an evidentiary hearing.

AFFIRMED in part; REVERSED in part.

ROWE, KELSEY, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Gina M. Girardot of Whittel & Melton, LLC, Saint Petersburg, for Appellant.

Pamela Jo Bondi, Attorney General, and Julian E. Markham, Assistant Attorney General, Tallahassee, for Appellee.