

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-2610

WILLIAM PRIVETT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

May 25, 2018

PER CURIAM.

The appellant appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. For the reasons discussed below, we affirm in part and reverse in part for further proceedings.

In 2011, following a jury trial, the appellant was convicted of lewd and lascivious battery and contributing to the delinquency of a minor and sentenced to prison. The appellant filed a timely motion for postconviction relief alleging five claims of ineffective assistance of counsel. We affirm the denial of grounds one, three, four, and five without further discussion. However, for the reasons discussed below, we reverse and remand the denial of ground two for further proceedings.

In ground two, the appellant alleged that counsel was ineffective for failing to call an expert to testify that the appellant did not write certain notes to the victim. The victim testified that she saw the appellant write the notes in which he allegedly professed his love for the victim and specified a certain sexual act he wanted to engage in with her. He alleges that he did not write the letters and that an expert would be able to confirm as much. He alleges that if an expert had established that he did not write the notes, the victim's credibility would have been harmed, and her testimony was the only evidence against him. There is nothing in the record before this Court that conclusively refutes the appellant's claims. Thus, we reverse and remand for the trial court to hold a hearing on the appellant's claim.

AFFIRMED in part, REVERSED in part, and REMANDED with directions.

RAY, BILBREY, and WINOKUR, JJ., concur.

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

William Privett, pro se, Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, for Appellee.