

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-3147

KYLE RAY HIMES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Nassau County.
Robert M. Foster, Judge.

October 15, 2018

PER CURIAM.

Appellant, Kyle Ray Himes, appeals from an order summarily denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. In his motion, Appellant asserted several grounds for relief based on newly discovered evidence. The lower court denied all such claims as successive in its order rendered on July 17, 2017. However, because the lower court did not include attachments of record evidence which conclusively refuted Appellant's claims, we reverse.

“To uphold the trial court's summary denial of claims raised in a 3.850 motion, the claims must be either facially invalid or conclusively refuted by the record.” *Peede v. State*, 748 So. 2d 253,

257 (Fla. 1999). “On appeal from the denial of relief, unless the record shows conclusively that the appellant is entitled to no relief, the order shall be reversed and the cause remanded for an evidentiary hearing or other appropriate relief.” Fla. R. App. P. 9.141(b)(2)(D).

Here, Appellant’s claims appear to be facially valid, and they are not conclusively refuted by the record. In fact, the State concedes error. We therefore reverse the lower court’s summary denial of Appellant’s claims of newly discovered evidence and remand for further proceedings.

REVERSED and REMANDED.

MAKAR, OSTERHAUS, and JAY, JJ., concur.

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

Andy Thomas, Public Defender, and Glen P. Gifford, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Bryan Jordan, Senior Assistant Attorney General, Tallahassee, for Appellee.