

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D17-3776

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CHRISTOPHER CHARLES  
MCINTOSH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

October 18, 2018

PER CURIAM.

Christopher Charles McIntosh, who was convicted of possession of a firearm by convicted felon, filed a motion for postconviction relief which raised four claims of ineffective assistance of counsel. We affirm the trial court's summary denial of Issues 1, 2, and 4 without further comment. However, we conclude that Issue 3 is a legally sufficient claim and is not refuted by the record attachments.

In Issue 3, Appellant asserted that counsel was ineffective for failing to move for a judgment of acquittal following the close of the State's case. We conclude that he pled a cognizable and legally sufficient claim. *See Griffin v. State*, 101 So. 3d 399, 399 (Fla. 1st

DCA 2012) (“The appellant’s rule 3.850 motion is facially sufficient to assert a claim of ineffective assistance of counsel to the extent that it alleges a failure to move for a judgment of acquittal on the charged offense of burglary with damage in excess of \$1,000.00.”). Additionally the court’s record attachments do not refute this claim. *See Ortiz v. State*, 968 So. 2d 681, 684 (Fla. 1st DCA 2007) (“[T]he trial court must attach portions of the record that conclusively refute the claims in order to properly issue a summary denial.”; *see also* Fla. R. Crim. P. 3.850(f)(5) (“[A] copy of that portion of the files and records that conclusively shows that the defendant is entitled to no relief shall be attached to the final order.”). Accordingly, we reverse the denial of Issue 3, for the trial court to hold a hearing or attach portions of the record which conclusively refute the claim.

AFFIRMED in part, REVERSED in part, and REMANDED.

ROBERTS, WETHERELL, and OSTERHAUS, JJ., concur.

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

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Christopher Charles McIntosh, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Samuel B. Steinberg, Assistant Attorney General, Tallahassee, for Appellee.