

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-850

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JOSHUA DUKES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Duval County.  
Maureen Horkan, Judge.

December 14, 2020

PER CURIAM.

Appellant challenges the trial court's summary denial of his motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850. We affirm as to all issues raised but write only to address Appellant's argument on appeal that the trial court erred in attaching and relying on extra-record documents to summarily deny his claim of newly discovered evidence. Several exhibits the trial court attached to its order were records and transcript excerpts from separate criminal proceedings against two of the witnesses who testified at Appellant's trial. There is no indication these documents were ever made a part of the record in Appellant's case, nor is there any indication the trial court followed the proper procedure for taking judicial notice of the documents. The trial court's reliance on these extra-record materials was improper. *See Fla. R. Crim. P. 3.850(f)(5)* (providing for summary

denial of a postconviction claim only where it “can be conclusively resolved either as a matter of law or by reliance upon the records *in the case*” (emphasis added); *see also Jones v. State*, 35 So. 3d 73, 74 (Fla. 1st DCA 2010) (“[T]he trial court, in summarily denying relief, relied upon court records for one of the State’s witnesses. There is no indication, however, that these documents were made part of the record in this case or that the trial court utilized the proper procedure in taking judicial notice of the documents.”). We conclude, however, that the error here was harmless given that the trial court attached additional exhibits consisting of files and records from Appellant’s case that were sufficient to refute the newly discovered evidence claim.

Because the trial court’s order is supported by record attachments that conclusively show Appellant is not entitled to relief, we affirm.

AFFIRMED.

LEWIS, NORDBY, and LONG, 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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Rick A. Sichta and Susanne K. Sichta of The Sichta Firm LLC, Jacksonville, for Appellant.

Ashley Moody, Attorney General, and Barbara Debelius, Assistant Attorney General, Tallahassee, for Appellee.