

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

KENNETH N. HEBERT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D12-2965

[August 13, 2014]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William L. Roby, Judge; L.T. Case No. 2005CF000302A.

Kenneth N. Hebert, Bonifay, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.

ON MOTION FOR REHEARING

PER CURIAM.

Upon consideration of appellant's motion for rehearing, we grant the motion in part and withdraw this court's per curiam affirmance dated June 12, 2014. The attached opinion is substituted therefor.

Kenneth N. Hebert appeals the denial of his amended Rule 3.850 motion for postconviction relief. He raised two grounds within his amended motion. The trial court summarily denied ground one and scheduled ground two for an evidentiary hearing. That ground included two points; however, only the first was the subject of the evidentiary hearing and the order that followed. As a result, the trial court failed to rule on the second point within that ground. While we affirm the trial court's disposition of ground one and the point addressed at the evidentiary hearing, we reverse and remand for the trial court to consider the remaining claim within ground two. *See McClendon v. State*, 862 So. 2d 945 (Fla. 4th DCA 2004). *See also* Fla. R. Crim. P. 3.850(f)(8)(C).

Affirmed in part, reversed and remanded in part.

WARNER, STEVENSON and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.