

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ANDREW BENEVENTO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Nos. 4D15-4656 and 4D15-4657

[July 27, 2016]

Consolidated appeal of order denying rule 3.850 from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jack Schramm Cox, Judge; L.T. Case Nos. 502012CF010477A and 502012CF005378A.

Farral A. Haber of Price Benowitz LLP, Washington, D.C., for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellee.

ON CONCESSION OF ERROR

PER CURIAM.

We reverse the trial court's order denying the defendant's Florida Rule of Criminal Procedure 3.850 motions for postconviction relief. We remand for further proceedings consistent with rule 3.850(f)(2).

The state's response to the motions in the trial court explained that because the motions lacked an oath and certification required by rules 3.850(c) and (n), dismissal without prejudice for the defendant to cure these defects would be appropriate pursuant to rule 3.850(f)(2).

The trial court entered an order adopting and incorporating the state's response, but then added that it was denying the motions "on the merits without further hearing." The order provided no explanation for the denial or for not following the state's recommendation to follow rule 3.850(f)(2).

As the state concedes, the trial court should not have denied the facially insufficient motions "on the merits without further hearing." We reverse

the orders and remand for further proceedings consistent with rule 3.850(f)(2).

Reversed and remanded for further proceedings.

DAMOORGIAN, GERBER and CONNER, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.