

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GREGORY FERRARO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D20-113

[September 9, 2020]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Gary L. Sweet, Judge; L.T. Case No. 562011CF002629C.

Gregory Ferraro, Fort Pierce, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

FORST and KLINGENSMITH, JJ., concur.
WARNER, dissents with opinion.

WARNER, J., dissenting.

On this record, I would reverse and remand for an evidentiary hearing on grounds one through three, as the record does not conclusively refute the claim of ineffective assistance as to counsel's trial strategy. See *Button v. State*, 941 So. 2d 531, 533 (Fla. 4th DCA 2006) ("A trial court cannot deny a motion for post-conviction relief by finding that defense counsel's decision was tactical or trial strategy without first holding an evidentiary hearing.").

* * *

Not final until disposition of timely filed motion for rehearing.