

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

ANGEL DIAZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D05-595

[September 14, 2005]

PER CURIAM.

Angel Diaz timely appeals the summary denial of his rule 3.850 motion. In claim seven of his motion, he alleged that his trial attorney provided ineffective assistance of counsel by not filing a motion in limine to exclude child hearsay or objecting to the introduction of child hearsay where the trial court did not make the necessary findings of reliability under the child hearsay exception, section 90.803(23)(a), Florida Statutes (1997). We find that this claim is legally sufficient and not refuted by the record. Accordingly we reverse and remand for an evidentiary hearing on this issue. We affirm the denial of his other claims.

GUNTHER, FARMER and SHAHOOD, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Joel T. Lazarus, Judge; L.T. Case No. 97-4047 CF10A.

Angel Diaz, Monticello, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and August A. Bonavita, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.