

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

TORIANO ROBERTS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-303

[September 27, 2006]

PER CURIAM.

We reverse the trial court's order denying appellant relief under Florida Rule of Criminal Procedure 3.850, as to the single ground referenced in our April 4, 2006, order to show cause. That ground pertains to appellant's claim his trial counsel was ineffective for failing to pursue a motion to disqualify the assistant state attorney on his case. Appellant argued the A.S.A. had previously represented him as a defense lawyer in a prior criminal case, and thereby received privileged information which would be prejudicial to appellant in the present case. Appellant's entry of pleas to the present charges does not negate this claim. *See Reaves v. State*, 574 So. 2d 105 (Fla. 1991), and *State v. Fitzpatrick*, 464 So. 2d 1185 (Fla. 1985). We remand for an evidentiary hearing, or for attachment of those portions of the record which conclusively show appellant is not entitled to relief.

STONE, POLEN and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Burton C. Conner, Judge; L.T. Case Nos. 562002CF00442A & 562002CF001231A.

Toriano Roberts, Okeechobee, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for

appellee.

Not final until disposition of timely filed motion for rehearing.