

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

FRANKLIN MONFISTON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D06-380

December 27, 2006

ON MOTION FOR REHEARING

PER CURIAM.

Monfiston seeks post-conviction relief under rule 3.850 based on his counsel's failure to assert a claim that *Miranda*¹ warnings were insufficient for the reason we addressed in *Roberts v. State*, 874 So. 2d 1225 (Fla. 4th DCA 2004). It appears from the officer's testimony in this case that *Miranda* warnings were read from the same sheriff's card that we found wanting in *Roberts*.

This court has previously recognized that such a claim may be raised under rule 3.850. *E.g.*, *Stancle v. State*, 917 So. 2d 911 (Fla. 4th DCA 2005). As in *Stancle*, we find Monfiston's claim of ineffective assistance of counsel to be sufficient.

The state, in its brief, has proffered the portion of the record that would have been attached to the summary order from the record. We deem the generalized objections raised by counsel in that record to be insufficient to support a summary disposition.

We have considered, and reject, the state's argument that Monfiston has waived the right to assert the *Roberts* issue by taking the position, regarding the motion to suppress, that no *Miranda* warnings were read at all.

¹ *Miranda v. Arizona*, 354 U.S. 436 (1966).

Therefore, we reverse the trial court's summary denial and remand for an evidentiary hearing or discharge.

GUNTHER, STONE and SHAHOOD, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner, Judge; L.T. Case No. 02-11951 CF10A.

Franklin Monfiston, Belle Glade, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Claudine M. LaFrance, Assistant Attorney General, West Palm Beach, for appellee.