

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2009*

**THOMAS MITTASCH,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D08-4194

[September 23, 2009]

PER CURIAM.

This is an appeal from an order denying appellant's motion for post-conviction relief. Appellant raised nine grounds for relief. We reverse on one ground and affirm the trial court's decision as to the other eight. Appellant was convicted of a burglary at a motel room. Ground one of his motion contends that his trial counsel rendered ineffective assistance of counsel for failing to call witnesses who would have supported the position that he had permission to be in the room. We find appellant's motion to be facially sufficient. *See Ford v. State*, 825 So. 2d 358, 360 (Fla. 2002) (quoting *Jackson v. State*, 711 So. 2d 1371, 1372 (Fla. 4th DCA 1998)). Consequently, we remand to the trial court to attach portions of the record to refute the claim or to conduct an evidentiary hearing.

*Affirmed in part, reversed in part, and remanded.*

GROSS, C.J., POLEN and DAMOORGIAN, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Martin J. Bidwill, Judge; L.T. Case No. 05-16744-CF-10.

Thomas Mittasch, Pompano Beach, pro se.

Bill McCollum, 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.***