NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

RYAN J. SIMMONS,)
Appellant,)
V.) Case No. 2D16-3871
STATE OF FLORIDA,)
Appellee.))

Opinion filed September 15, 2017.

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Manatee County; Susan B. Maulucci, Judge.

Ryan J. Simmons, pro se.

LaROSE, Chief Judge.

Ryan J. Simmons, pro se, appeals the postconviction court's order summarily denying his motion for return of property. <u>See</u> Fla. R. App. P. 9.141(b)(2); <u>Bolden v. State</u>, 875 So. 2d 780, 782 n.3 (Fla. 2d DCA 2004). The postconviction court denied the motion as untimely but failed to attach the judgment and sentence. We reverse and remand for the postconviction court to attach portions of the record that conclusively refute Mr. Simmons' claim or hold an evidentiary hearing on the matter.

See Almeda v. State, 959 So. 2d 806, 809 (Fla. 2d DCA 2007) ("[I]f the circuit court deemed the motion's allegations to be facially sufficient, the circuit court should have either attached portions of the record that conclusively refuted Mr. Almeda's claim or held an evidentiary hearing."); Stevens v. State, 929 So. 2d 1197, 1197 (Fla. 2d DCA 2006).

Reversed and remanded with instructions.

MORRIS and SALARIO, JJ., Concur.