

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

KENNETH A. STELMASZEK, )

Appellant, )

v. )

STATE OF FLORIDA, )

Appellee. )

Case No. 2D00-3131

Opinion filed December 21, 2001.

Appeal pursuant to Fla. R.  
App. P. 9.141(b)(2) from the  
Circuit Court for Charlotte  
County, Donald E. Pellicchia,  
Judge.

Kenneth A. Stelmaszek, pro se.

DAVIS, Judge.

Kenneth A. Stelmaszek challenges the circuit court's summary denial of his Florida Rule of Criminal Procedure 3.850 motion. He raises sixteen issues. We affirm fifteen of these issues without comment. The sixteenth, however, is meritorious.

Stelmaszek claims that he was coerced into entering a guilty plea by the trial court's refusal to allow him to call witnesses. Specifically, he argues that while he prepared

to defend himself pro se, the trial court entered an order sua sponte directing the clerk of courts not to issue any witness subpoenas. He further maintains that prior to entering his plea, the trial court heard several motions raised by him and that during this hearing he was unable to present witnesses even though the State was able to.

The trial court denied Stelmaszek's claim, finding that he waived his right to call witnesses by pleading guilty. Although the trial court attached to its order a copy of Stelmaszek's plea agreement and the portion of the transcript in which he acknowledged that he read and understood the plea, these record attachments do not refute Stelmaszek's claim that he entered into the plea because he was being refused the right to call witnesses.

Accordingly, we must reverse. On remand, if the trial court again summarily denies the claim, the trial court must attach record documents that conclusively refute the claim.

Reversed and remanded.

GREEN, J., and THREADGILL, EDWARD F., Senior Judge, Concur.