

Third District Court of Appeal

State of Florida, July Term, A.D. 2008

Opinion filed October 29, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D08-474

Lower Tribunal No. 01-12763

Mark Washington,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Antonio Marin, Judge.

Mark Washington, in proper person.

Bill McCollum, Attorney General, and Douglas J. Glaid, Assistant Attorney General, for appellee.

Before RAMIREZ and SALTER, JJ., and SCHWARTZ, Senior Judge.

PER CURIAM.

Mark Washington appeals the trial court's summary denial of his Florida Rule of Criminal Procedure 3.850 motion. Based upon the State's proper confession of error, we reverse and remand this case because the present record does not refute claims 2, 3, 4, 5, 7, and 8 of Washington's motion. Washington's first and sixth claims were properly denied, however, and we affirm the trial court's denial of those claims.

On remand, if the trial court again enters an order summarily denying Washington's postconviction motion, the trial court shall attach those portions of the record conclusively refuting Washington's remaining claims. See Fla. R. App. P. 9.141(b)(2)(D) (requiring reversal by this Court unless the record shows conclusively that the defendant is entitled to no relief); see also Torrealba v. State, 947 So. 2d 493, 495 (Fla. 3d DCA 2006) (finding that both trial and appellate courts can consider portions of the record attached to the State's trial court response).

Affirmed in part, reversed in part, and remanded for further proceedings.