

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed February 3, 2010.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-2802
Lower Tribunal No. 04-CF-224-B-M

Byron D. Waller,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Monroe County, Ruth Becker, Acting Circuit Judge.

Byron D. Waller, in proper person.

Bill McCollum, Attorney General, for appellee.

Before SHEPHERD, SUAREZ, and LAGOA, JJ.

SUAREZ, J.

This is an appeal of an order summarily denying a motion under Florida Rule of Criminal Procedure 3.850. On appeal from a summary denial, this Court

must reverse unless the postconviction record, shows conclusively that the appellant is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(A), (D).

Because the record now before us fails to make the required showing, we reverse the order and remand for an evidentiary hearing or other appropriate relief. If the trial court again enters an order summarily denying the postconviction motion, the court shall attach record excerpts conclusively showing that the appellant is not entitled to any relief.

Reversed and remanded for further proceedings.