

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BRUCE JOHNSON,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D09-5449

STATE OF FLORIDA,

Appellee.

Opinion filed April 13, 2010.

An appeal from the Circuit Court for Bay County.
Richard Albritton, Judge.

Bruce Johnson, pro se, Appellant.

Bill McCollum, Attorney General, and Thomas D. Winokur, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

The appellant filed a facially sufficient motion pursuant to Florida Rule of
Criminal Procedure 3.850 arguing that his counsel was ineffective for permitting
him to plead to driving while license suspended or revoked because he had

previously been designated as a habitual traffic offender pursuant to section 322.264(1)(b), Florida Statutes (2006), and thus could not be convicted of violating section 322.34(2), Florida Statutes (2006). Section 322.34(2) expressly states that it does not apply to those who have been designated “habitual traffic offenders,” as defined in section 322.264. The trial court denied the motion without attaching record portions that would refute the appellant’s claim.

Because the appellant’s claim is facially sufficient, we reverse and remand for the trial court to either attach portions of the record conclusively refuting the appellant’s claim that he cannot be convicted under section 322.34(2) where he has previously been designated as a habitual traffic offender, or, in the alternative, to hold an evidentiary hearing at which the appellant may prove his claim.

REVERSED AND REMANDED.

WEBSTER, LEWIS, and ROBERTS, JJ., CONCUR.