

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

TONY LEE ASHLEY,
Appellant,

v.

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

CASE NO. 1D10-6722

STATE OF FLORIDA,
Appellee.

/

Opinion filed March 22, 2011.

An appeal from the Circuit Court for Duval County.
L. P. Haddock, Judge.

Tony Lee Ashley, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Jennifer J. Moore, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Tony Lee Ashley, challenges the trial court's order summarily denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Based upon the portions of the record that the trial

court attached to its order, summary denial as to grounds one and three was proper. However, as the State acknowledged in its response to this Court's Toler order, the trial court failed to attach portions of the record conclusively refuting the claims made in ground two of the motion. Accordingly, we reverse and remand for the trial court to either attach portions of the record conclusively refuting ground two or for an evidentiary hearing.

AFFIRMED in part; REVERSED in part; and REMANDED.

WOLF, DAVIS, and PADOVANO, JJ., CONCUR.