

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2009

LUIS GARZA,

Appellant,

v.

Case No. 5D09-620

STATE OF FLORIDA,

Appellee.

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Opinion filed March 27, 2009

3.850 Appeal from the Circuit  
Court for Citrus County,  
Richard Howard, Judge.

Luis M. Garza, Raiford, Pro Se.

No Appearance for Appellee.

PER CURIAM.

Luis M. Garza appeals the trial court's summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The trial court denied the motion, concluding that Garza's claims were raised in an earlier motion for postconviction relief.

While the trial court is correct that Garza's motion would be barred as successive if it raised the same claims as those raised in an earlier rule 3.850 motion, it did not attach any portion of the record to its order. Consequently, the record before this Court does not demonstrate that the motion is successive. Therefore, we remand this case to

the trial court for attachment of those portions of the record conclusively refuting Garza's claims.

REMANDED.

GRIFFIN, ORFINGER and EVANDER, JJ., concur.