

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

JANUARY TERM 2010

JOHN DAVID COOKSEY,

Appellant,

v.

Case No. 5D10-703

STATE OF FLORIDA,

Appellee.

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Opinion filed June 25, 2010

3.850 Appeal from the Circuit Court
for Orange County,
Roger J. McDonald, Judge.

John D. Cooksey, Clermont, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Ann M. Phillips,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

John David Cooksey appeals the trial court's summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm the trial court's order without discussion except as to claim 3 of Cooksey's postconviction motion. As to claim 3, the State concedes that the record does not conclusively refute Cooksey's claim and that he is entitled to a hearing on that claim alone. We accept the State's proper concession.

We affirm in all respects except as to claim 3 of Cooksey's postconviction motion. On remand, the trial court shall conduct an evidentiary hearing on that claim alone to determine its merits and relief, if any. See Moss v. State, 860 So. 2d 1007 (Fla. 5th DCA 2003).

AFFIRMED IN PART; REVERSED IN PART and REMANDED.

ORFINGER, EVANDER and JACOBUS, JJ., concur.