

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

JANUARY TERM 2012

SYLVIO MONTINA,

Appellant,

v.

CASE NO. 5D11-671

STATE OF FLORIDA,

Appellee.

Opinion filed March 2, 2012

3.850 Appeal from the Circuit Court
for Orange County,
C. Jeffery Arnold, Judge.

Sylvio Montina, Lowell, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Sylvio Montina appeals an order summarily denying various postconviction claims of ineffective assistance of counsel, an order denying one postconviction claim after an evidentiary hearing (Montina's claim six), and the denial or failure to address Montina's request for appointment of counsel prior to (or at) that evidentiary hearing. We affirm the summary denial order without further discussion, but agree with Montina that the trial court erred by failing to consider his request for the appointment of counsel

to aid in the preparation and presentation of evidence on his sixth claim. See *Graham v. State*, 372 So. 2d 1363, 1365 (Fla. 1979) ("[A]lthough there is no absolute right to counsel in post-conviction relief proceedings, the [postconviction court] *must determine the need for counsel* and resolve any doubts in favor of the appointment of counsel for the defendant.") (emphasis added). It is also clear, based upon the *Graham* factors, that counsel should have been appointed in this case. Accordingly, we reverse the denial of Montina's sixth claim and remand for the appointment of postconviction counsel, and for a new hearing on the claim.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS.

TORPY and LAWSON, JJ., concur.
GRIFFIN, J., dissents, without opinion.