

902 So.2d 879 (Mem)
District Court of Appeal of Florida,
First District.

Douglas STEWART, Appellant,
v.
STATE of Florida, Appellee.

No. 1D04-4051.
|
May 27, 2005.

An appeal from the Circuit Court for Nassau County.
[Robert M. Foster](#), Judge.

Attorneys and Law Firms

[James E. Felman](#); and [Katherine Earle Yanes](#) of Kynes,
Markman & Felman, P.A., Tampa, for Appellant.

Charlie Crist, Attorney General, Tallahassee, for
Appellee.

Opinion

[BROWNING, J.](#)

Reversal is required in this appeal from the summary denial of Appellant's postconviction motion for relief under [Florida Rule of Criminal Procedure 3.850](#), because *880 the trial court failed to attach portions of the record that refute Appellant's claims. *See, e.g., Johnson v. State, 840 So.2d 369 (Fla. 1st DCA 2003)*. Although the trial court found that any error was harmless, this Court will not presume harmlessness. *See Banks v. State, 673 So.2d 937 (Fla. 1st DCA 1996)*. On remand, the trial court is directed to attach the portions which refute the claims. In the alternative, the trial court may hold an evidentiary hearing on Appellant's claims.

REVERSED AND REMANDED.

[WOLF, C.J.](#); and [DAVIS, J.](#), concur.

All Citations

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