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

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

GREGORY GAFFNEY,

Appellant,

v. Case No. 5D15-3914

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed February 24, 2017

3.850 Appeal from the Circuit Court for Orange County,
Marc L. Lubet, Judge.

Gregory Gaffney, Crawfordville, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Allison Leigh Morris, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Gregory Gaffney appeals the order of the trial court denying Grounds One through Nine of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief. We affirm as to Grounds Two through Nine. However, because the record attachments do not conclusively refute Gaffney's claim that his trial counsel was ineffective for threatening or coercing him into deciding not to testify at trial, we reverse the summary denial of

Ground One and remand for attachment of portions of the record conclusively refuting this claim or for an evidentiary hearing. See Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000) ("[A] defendant is entitled to an evidentiary hearing on a postconviction relief motion unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient." (citing Maharaj v. State, 684 So. 2d 726 (Fla. 1996))).

AFFIRMED in part, REVERSED in part, and REMANDED.

SAWAYA, BERGER and LAMBERT, JJ., concur.