

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

PATRICK MAXWELL,

Appellant,

v.

Case No. 5D17-3624

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed May 11, 2018

3.850 Appeal from the Circuit
Court for Orange County,
Alan S. Apte, Judge.

Mary E. Fitzgibbons, Orlando,
for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Patrick Maxwell appeals the summary denial of Ground Two of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Because the record does not conclusively refute Maxwell's claim that counsel was ineffective for failing to request an independent act jury instruction, we reverse the summary denial of Ground Two and remand for attachment of portions of the record conclusively refuting

that 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))).

REVERSED and REMANDED.

EVANDER, BERGER and EISNAUGLE, JJ., concur.