

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED**

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

APPELLATE DIVISION

MICHAEL P. GRIZZELL

Appellant,

Appeal Case No. CRC 09-00022 APANO

vs.

UCN No. 522005CT016956XXXXXX

STATE OF FLORIDA,

Appellee.

Opinion filed: 11/5/09.

Appeal from denial of Rule 3.850 Motion
entered by the Pinellas County Court
County Judge Robert Dittmer

Lynda B. Barack, Esquire
Attorney for Appellant

Bernie J. McCabe, State Attorney
Attorney for Appellee

ORDER AND OPINION

PER CURIAM

Appellant appeals summary denial of his motion for postconviction relief from a conviction for Driving While Under the Influence with Property Damage § 316.193(3)(a)(b)(c)(1). Appellant entered a nolo contendere plea and was sentenced to 12 months comprehensive probation with standard DUI conditions and a 90-day residential rehabilitation

program. Appellant filed a motion for postconviction relief pursuant to Rule 3.850 claiming ineffective assistance of counsel and a Brady violation. The trial court denied the motion.

This Court finds that the denial of this claim was improper without an evidentiary hearing where the court could examine the quality of the Appellant's potential claim. Anderson v. State, 627 So. 2d 1170, 1171 (Fla. 1993). "To support summary denial without a hearing, a trial court must either state its rationale in its decision or attach those specific parts of the record that refute each claim presented in the motion." Anderson, 627 So. 2d at 1171. In this case, the court neither stated its rationale in its decision nor attached specific parts of the record to refute each claim; therefore, the summary denial of the ineffective assistance claim was improper.

ACCORDINGLY, the order denying postconviction relief is REVERSED and this cause is REMANDED for an evidentiary hearing.

DONE and ORDERED this 4th day of Nov, 2009 at Pinellas County, Florida.

Original opinion entered by Circuit Judges David A. Demers, Joseph A. Bulone, & Chris Helinger.

Copies to: State Attorney's Office
Sixth Judicial Circuit of Florida
Lynda B. Barack, Esquire