

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-2169

MICHAEL YACOB,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Angela M. Cox, Judge.

August 14, 2019

PER CURIAM.

Michael Yacob seeks review of the denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Yacob raised seven grounds for relief. We affirm on grounds one through five without discussion. However, upon the State's proper concession of error, we reverse and remand on grounds six and seven.

On review of a summary denial of a motion for postconviction relief, this Court accepts the defendant's allegations as true to the extent that they are not conclusively refuted by the record. *See Ventura v. State*, 2 So. 3d 194, 197-98 (Fla. 2009). The trial court may summarily deny postconviction claims that are legally insufficient, that should have been brought on direct appeal, or

that are positively refuted by the record. *See Gore v. State*, 24 So. 3d 1, 11 (Fla. 2009). In grounds six and seven, Yacob raised allegations of ineffective assistance of counsel. However, we are unable to determine whether these allegations meet the requirements of *Strickland v. Washington*, 466 U.S. 668 (1984), as the trial court failed to address grounds six and seven in its order denying Yacob's motion and failed to attach any portion of the record that would refute these allegations. Accordingly, we reverse and remand the case to the trial court to either conduct an evidentiary hearing or attach portions of the record that conclusively refute the claims of Yacob in grounds six and seven.

AFFIRMED in part; REVERSED in part, and REMANDED.

RAY, C.J., and LEWIS and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael Yacob, pro se, Appellant.

Ashley Moody, Attorney General, and Frank X. Moehrle, Assistant Attorney General, Tallahassee, for Appellee.