

FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 5D2026-0588
LT Case No. 16-2018-CF-005595-A

JAVARIUS M. JACKSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

3.850 Appeal from the Circuit Court for Duval County.
Tatiana Radi Salvador, Judge.

Javarius M. Jackson, DeFuniak Springs, pro se.

No Appearance for Appellee.

September 4, 2026

PER CURIAM.

Javarius M. Jackson appeals the summary denial of his motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.850. As to Ground 4 of his motion, we reverse.¹ *See Newcomer v. State*, 371 So. 3d 435, 437 (Fla. 5th DCA

1. We affirm the summary denial of Jackson's other claims without further comment.

2023) (“To uphold the trial court’s summary denial of claims raised in a 3.850 motion, the claims must be either facially invalid or conclusively refuted by the record.” (citation omitted)); *Jacobs v. State*, 880 So. 2d 548, 555 (Fla. 2004) (“[T]he record evidence must *conclusively* rebut the claim if the claim is to be resolved without a hearing.”); *see also Duty v. State*, 322 So. 3d 770, 772 (Fla. 1st DCA 2021) (“Unlike the strategic decision to call a witness to testify at trial, the failure to reasonably investigate and locate witnesses can often serve as a colorable claim of ineffective assistance of counsel.” (citation omitted)); *Yarbrough v. State*, 871 So. 2d 1026, 1031 (Fla. 1st DCA 2004) (“Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” (citation modified)). On remand, the postconviction court is directed to either grant Jackson leave to amend his claim, grant an evidentiary hearing on the claim, or attach the portions of the record that would conclusively refute this claim. *See Gonzalez v. State*, 359 So. 3d 870, 871–72 (Fla. 5th DCA 2023); *Smith v. State*, 150 So. 3d 1205, 1206–07 (Fla. 5th DCA 2014).

AFFIRMED in part; REVERSED in part; and REMANDED with instructions.

EISNAUGLE and KILBANE, JJ., concur.

HARRIS, J., dissents with opinion.

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

HARRIS, J., dissenting

In his Rule 3.850 motion, Jackson alleged several claims of ineffective assistance of counsel. I agree with the majority in the affirmance of the summary denial of the bulk of Jackson's claims. However I would similarly affirm the summary denial of Ground 4 of Jackson's motion, the only claim on which our court grants Jackson relief.

In Ground Four of his motion, Jackson alleges that his trial counsel was ineffective for failure to investigate and locate an alibi witness. According to his motion, he was with "Michelle" on the other side of Jacksonville when this crime was committed. Jackson acknowledged that he had no additional knowledge about the witness or her location.

As noted in the majority opinion, "to uphold the summary denial of Rule 3.850 motion, the claim must be facially invalid or conclusively refuted by the record." *Peede v. State*, 748 So. 2d 253, 257 (Fla. 1999). Jackson's claim, in my view, is both facially invalid and conclusively refuted by the record. It is facially invalid, primarily because he never alleges that "Michelle" would have been available to testify at trial. It is also refuted by the record because Jackson's sworn testimony refutes his claim that his attorney failed to call a known witness against Jackson's wishes.

To establish ineffective assistance of counsel, a defendant must show that counsel's action or inaction resulted in prejudice to him. *See Smith v. State*, 445 So. 2d 323 (Fla. 1983). "That a witness would have been available to testify is integral to the prejudice allegations. If a witness would not have been available to testify at trial, then the defendant will not be able to establish deficient performance or prejudice from counsel's failure to call, interview or investigate that witness." *Nelson v. State*, 875 So. 2d 579 (Fla. 2004). Our Supreme Court clearly held in *Nelson* that a facially sufficient postconviction motion alleging ineffectiveness of counsel for failure to call a certain witness *must* include an assertion that the witness would have been available to testify at trial. Jackson's motion contained no such allegation.

Additionally, after the State rested its case, the trial court questioned appellant about his decision not to call witnesses. The court specifically asked Jackson whether there were any witnesses that he wanted his attorney to call. Jackson replied that there was not. *See Terrell v. State*, 9 So. 3d 1284, 1288–89 (Fla. 4th DCA 2009) (defendant was bound by his answers to the court’s colloquy that he did not want to call any witnesses, defeating his claim that his counsel failed to investigate and call a witness known to the defendant prior to trial).

I would find Ground Four facially invalid and conclusively refuted by the record and would therefore affirm the lower court’s summary denial of Ground Four.