

# Supreme Court of Florida

---

No. 69,568

---

GEORGE LEMON, Appellant,  
vs.  
STATE OF FLORIDA, Appellee.

[December 11, 1986]

PER CURIAM.

George Lemon, a state prisoner for whom a death warrant has been signed, appeals the circuit court's denial of his motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. We have jurisdiction. Art. V, § 3(b)(1), Fla. Const. We granted a stay of execution and now reverse the trial court's order and remand for an evidentiary hearing.

We previously affirmed appellant's conviction for first-degree murder and sentence of death. See Lemon v. State, 456 So.2d 885 (Fla. 1984), cert. denied, 469 U.S. 1230 (1985).

It is clear that appellant is entitled to an evidentiary hearing unless "the motion and the files and records in the case conclusively show that the prisoner is entitled to no relief." Fla. R. Crim. P. 3.850; State v. Crews, 477 So.2d 984 (Fla. 1985); O'Callaghan v. State, 461 So.2d 1354 (Fla. 1984). Having reviewed appellant's motion, files and record, we find that his allegations are sufficient to require an evidentiary hearing. Accordingly, we remand to the circuit court for further

proceedings consistent herewith. The stay of execution issued November 4, 1986, is hereby dissolved.

It is so ordered.

ADKINS, OVERTON, EHRLICH, SHAW and BARKETT, JJ., Concur  
McDONALD, C.J., and BOYD, J., Dissent

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF  
FILED, DETERMINED.

An Appeal from the Circuit Court in and for Polk County,

Edward F. Threadgill, Jr., Judge - Case No. 82-3154 A1

Larry Helm Spalding, Capital Collateral Representative; and  
Mark E. Olive, Litigation Director, Billy H. Nolas and Lissa J.  
Gardner, Office of the Capital Collateral Representative, Tallahassee,  
Florida,

for Appellant

Jim Smith, Attorney General, and Katherine V. Blanco and Peggy A.  
Quince, Assistant Attorneys General, Tampa, Florida,

for Appellee