

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

PETER CUNNINGHAM,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-4124

[July 29, 2015]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona M. Holmes, Judge; L.T. Case No. 04-9086 CF10A.

Peter Cunningham, Milton, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Mitchell A. Egber, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Peter Cunningham, convicted of second degree murder and two counts of attempted manslaughter with a firearm, appeals a circuit court order summarily denying his motion for post-conviction relief, which raised eight grounds. We affirm the circuit court's summary denial of seven of the grounds without further discussion and reverse its summary denial of ground two.

In ground two, Cunningham claimed ineffective assistance of trial counsel for failure to object and move for mistrial when the jury observed him wearing shackles during trial. The State's response and record attachments do not refute this claim. *See Torres v. State*, 9 So. 3d 746 (Fla. 4th DCA 2009).

We remand to the circuit court to hold an evidentiary hearing on this claim or attach portions of the record refuting it.

Reversed and remanded.

WARNER, TAYLOR and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.