

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 08-13016
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 10, 2009 THOMAS K. KAHN CLERK
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D.C. Docket No. 07-22183-CV-JAL

DARRICK ADAWAY,

Petitioner-Appellant,

versus

DEPARTMENT OF CORRECTIONS,
Walter A. McNeil, Secretary,
ATTORNEY GENERAL OF THE STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(June 10, 2009)

Before DUBINA, Chief Judge, BLACK and FAY, Circuit Judges.

PER CURIAM:

Appellant Darrick Adaway, a Florida state prisoner proceeding *pro se*,
appeals the district court's denial of his 28 U.S.C. § 2254 federal habeas petition.

We granted a certificate of appealability as to whether the district court violated *Clisby v. Jones*, 960 F.2d 925, 938 (11th Cir. 1992) (*en banc*), when it failed to address his claim of ineffective assistance of counsel for failure to appeal a motion to suppress his confession.

“[W]e review questions of law and mixed questions of law and fact *de novo*, and findings of fact for clear error.” *Stewart v. Sec’y, Dep’t of Corr.*, 476 F.3d 1193, 1208 (11th Cir. 2007). In *Clisby*, we held that when a district court fails to address all claims in a habeas petition, we will vacate without prejudice and remand the case for consideration of all remaining claims. 960 F.2d at 938. Under *Clisby*, a claim “is any allegation of a constitutional violation.” *Id.* at 936. Ineffective assistance of counsel constitutes a violation of a defendant’s Sixth Amendment rights, and thus is a claim of a constitutional violation. *Strickland v. Washington*, 466 U.S. 668, 684–86, 104 S. Ct. 2052, 2063-64, 80 L. Ed. 2d 674 (1984).

After a careful review of the record on appeal and the briefs of the parties, we conclude the district court violated *Clisby* by failing to address Adaway’s claim of ineffective assistance of counsel for failure to appeal the denial of the motion to suppress his confession. Accordingly, we vacate the district court’s

judgment without prejudice and remand for consideration of the remaining claim
by the district court.

VACATED AND REMANDED.