

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ROY GOINS,

Appellant,

v.

Case No. 5D14-1518

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 19, 2014.

3.850 Appeal from the Circuit
Court for Marion County,
Willard Pope, Judge.

Roy Goins, Lake City, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, Marjorie Vincent-Tripp and
Pamela J. Koller, Assistant Attorneys
General, Daytona Beach, for Appellee.

WALLIS, J.

Appellant appeals the summary denial of his amended motion for postconviction relief after he pleaded guilty to the felony of driving under the influence, fourth or subsequent offense. Appellant argued that his plea agreement for his fourth DUI and resulting sentence of five years' incarceration should be set aside because his trial counsel failed to investigate and determine that Appellant was not offered counsel for his 1985 DUI conviction. Appellant contends that his 1985 DUI could not be used as a predicate to enhance the charge for his fourth DUI in this case to a felony because the

1985 DUI was uncounseled. The State correctly concedes that under Kelly v. State, 999 So. 2d 1029, 1053 n.20 (Fla. 2008), a prior misdemeanor conviction in which a defendant is unrepresented due to a denial of counsel cannot be used as a later statutory enhancer. The State correctly concedes that the order denying the postconviction motion should be reversed and the case remanded for the lower court to (1) attach documents showing Appellant waived a right to counsel in the 1985 DUI conviction, (2) attach documents refuting Appellant's claim that he did not have counsel, or (3) hold an evidentiary hearing. We therefore reverse and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED with DIRECTIONS.

EVANDER and BERGER, JJ., concur.