

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

JULY TERM 2013

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

SEAN M. TOMPKINS,

Appellant,

v.

Case No. 5D12-4848

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed August 16, 2013

3.850 Appeal from the Circuit Court
for Osceola County,
Scott Polodna, Judge.

Sean M. Tompkins, Malone, pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant, Sean M. Tompkins, appeals the order denying the motion that he filed pursuant to rule 3.850, Florida Rules of Criminal Procedure. He entered an open plea to the court to three counts of lewd and lascivious battery in violation of section 800.04(4)(a), Florida Statutes (2008). Tompkins (eighteen years old) and the victim (fourteen years old) were involved in a romantic relationship at the time of the offenses.

After his plea was accepted by the trial court, Tompkins was sentenced to fourteen years in prison.

In his motion, Tompkins alleged his trial counsel was ineffective for the following four reasons: 1) misadvising him to reject a plea offer from the State offering a youthful offender sentence; 2) failing to call witnesses at sentencing to provide mitigating evidence; 3) failing to properly investigate the case; and 4) failing to object to the lack of a factual basis for the plea he entered. The trial court summarily denied grounds 1, 2, and 4, and granted an evidentiary hearing on ground 3. We affirm the order denying the motion as to grounds 2, 3, and 4. However, as to ground 1, the attached portions of the record do not conclusively refute this claim. Therefore, we reverse that part of the order summarily denying ground 1 and remand for an evidentiary hearing.

AFFIRMED in part; REVERSED in part; REMANDED.

SAWAYA, LAWSON and COHEN, JJ., concur.