

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

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D13-439
CORRECTED

LUTHER T. MCKIVER,

Appellee.

_____ /

Opinion filed December 13, 2013

3.850 Appeal from the Circuit Court
for Citrus County,
Sandy K. Kautz, Judge.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Appellant.

James S. Purdy, Public Defender, and
Allison A. Havens, Assistant Public
Defender, Daytona Beach, for Appellee.

PER CURIAM.

The State appeals the trial court order granting Appellee's Motion for Post Conviction Relief under rule 3.850, Florida Rules of Criminal Procedure. As the Florida Supreme Court has held:

[T]wo requirements must be satisfied for ineffective assistance of counsel claims to be successful under the

Strickland^[1] standard: First, a defendant must show that counsel's actions or omissions were deficient; and second, the deficiency established must further be shown to have so affected the proceeding that confidence in the outcome is undermined.

Johnston v. State, 70 So. 3d 472, 477 (Fla. 2011) (citing Schoenwetter v. State, 46 So. 3d 535, 545-46 (Fla. 2010)). We conclude that Appellee failed to meet his burden of establishing either prong under Strickland and therefore vacate the order under review and order that the judgment and sentence be reinstated.

ORDER VACATED; JUDGMENT AND SENTENCE REINSTATED.

SAWAYA, LAWSON, and WALLIS, JJ., concur.

¹ Strickland v. Washington, 466 U.S. 668 (1984).