LARRY WAYNE HEBERT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

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

CASE NOS. 1D07-1964 and 1D07-5897

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Opinion filed September 10, 2009.

An appeal from the Circuit Court for Escambia County.
Frank Bell, Judge.

Nancy A. Daniels, Public Defender, and Gail E. Anderson, Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Philip W. Edwards, Assistant Attorney General, Tallahassee, for Appellee.

KAHN, J.

A jury convicted appellant Larry Wayne Hebert for, among other things, grand theft and contracting without a license during a state of emergency. Hebert now appeals his convictions and sentences and, in a consolidated case, the purported denial of his motion to withdraw guilty pleas in a separate prosecution. As explained below, we dismiss the latter appeal for lack of jurisdiction, but we affirm Hebert's convictions and sentences in the case that proceeded to trial.

The State presented evidence at trial that purported to support a conviction for grand theft on two theories: first, that appellant committed grand theft by refusing to refund a homeowner's contractually required deposit for then-uncompleted solar-panel work; and, second, that Hebert arranged for associates to install a defective roof that now must be replaced at considerable expense. We find the State presented legally sufficient evidence to sustain the conviction, but only with respect to the first theory. A reasonable juror, considering the evidence in the light most favorable to the State, could have inferred that appellant acted with the requisite specific intent to commit grand theft on the basis of evidence that he withheld the homeowner's deposit when asked to refund it. See § 812.014(1)(a), Fla. Stat. (2004). Unlike the contractor in Crawford v. State, 453 So. 2d 1139, 1140 (Fla. 2d DCA 1984), a case upon which appellant relies, Hebert was unlicensed and thus did not hold a lawful claim to the deposit money. See § 489.128(1), Fla. Stat. (2004) (providing that, "[a]s a matter of public policy, contracts entered into . . . by an unlicensed contractor shall be unenforceable . . . by the unlicensed contractor"). By withholding funds to which he had no legal claim, appellant committed grand theft. § 812.014(1)(a), Fla. Stat. (2004).

In contrast, the State's evidence of specific intent is lacking with respect to the second theory. Evidence of defective construction work is not enough to establish specific intent to commit grand theft. See generally Jones v. State, 4 So.

3d 687, 689 (Fla. 1st DCA 2009). Nonetheless, because the State presented legally sufficient evidence with respect to one of the two alternative theories of guilt, we affirm appellant's conviction for grand theft. See San Martin v. State, 717 So. 2d 462, 470 (Fla. 1998) (explaining "reversal is not warranted" in case where jury's verdict "could have rested upon a theory of liability without adequate evidentiary support when there was an alternative theory of guilt for which the evidence was sufficient").[*] Likewise, we find legally sufficient record evidence to support appellant's conviction for contracting without a license during a state of emergency. See §§ 489.127(1)(f), (2)(c), Fla. Stat. (2004). We affirm that conviction, as well.

Appellant last argues that, to the extent trial counsel failed to preserve some of his arguments regarding evidentiary sufficiency, counsel was ineffective. The record, however, does not bespeak such apparent ineffective assistance of trial counsel that appellant's ineffective-assistance claim is cognizable on direct appeal appeal, so we reject that claim, recognizing that appellant may seek postconviction relief in a collateral criminal proceeding. See Mansfield v. State, 758 So. 2d 636, 642 (Fla. 2000); Blanco v. Wainwright, 507 So. 2d 1377, 1384 (Fla. 1987).

[*] As an example of convictions resting upon "a legally inadequate theory," and thus requiring reversal, the court in San Martin referenced a case where one of the State's theories would have led to a conviction violative of the First Amendment, Stromberg v. California, 283 U.S. 359 (1931), and another that could have resulted in a conviction for an offense barred by the applicable statute of limitations, Yates v. United States, 354 U.S. 298 (1957). San Martin, 717 So. 2d at 470 nn. 9 & 10.

Hebert also challenges, under separate case number, the purported denial of a motion to withdraw two guilty pleas in prosecutions for similar offenses committed against different victims. The record, however, does not contain a written final order formally disposing of the motion. This court consequently lacks jurisdiction to consider the matter. See Fla. R. App. P. 9.020(h); Billie v. State, 473 So. 2d 34, 34 (Fla. 2d DCA 1985). We therefore dismiss Hebert's appeal in Case No. 1D07-5897.

In Case No. 1D07-1964, appellant's convictions and sentences are AFFIRMED. Case No. 1D07-5897 is DISMISSED without prejudice to Hebert's right to seek further relief in the trial court.

THOMAS and ROBERTS, JJ., CONCUR.