

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D18-2208

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JIMMIE LEROY MONGO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Levy County.  
Mark W. Moseley, Judge.

November 8, 2019

PER CURIAM.

Jimmy Leroy Mongo appeals an order denying his postconviction motion. We affirm and write only to address his claim that his counsel was ineffective for failing to advise him properly during plea negotiations of the mandatory minimum life sentence he faced.

Mongo was arrested for multiple offenses stemming from a physical altercation with his girlfriend and her stepfather. The State charged Mongo with felony battery, aggravated assault with a deadly weapon, battery on a person 65 years of age or older, burglary while armed, and resisting arrest without violence. The State offered Mongo a plea deal of 15 years' imprisonment with a 3-year mandatory minimum. Mongo rejected the plea and went to

trial. Mongo was convicted on all counts and received a life sentence.

In seeking postconviction relief, Mongo argued that his trial counsel was ineffective for failing to advise him properly during plea negotiations that he faced a mandatory minimum life sentence if convicted on the armed burglary count. To prevail on his ineffective assistance of counsel claim, Mongo had to show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 104 S. Ct. 2052, 2064 (1984).

Mongo satisfied the first *Strickland* prong by showing deficient performance by counsel. Confusion existed between the parties about the mandatory minimum sentence Mongo faced. Counsel advised that Mongo could receive a 45-year mandatory minimum sentence with a possibility of life if convicted. But counsel never told Mongo that he faced a mandatory minimum life sentence if convicted on the armed burglary count. This failure constitutes deficient performance. *Alcorn v. State*, 121 So. 3d 419, 426 (Fla. 2013).

But Mongo has not shown prejudice as the second prong of *Strickland* requires. He had to allege and prove to a reasonable probability that (1) he would have accepted the State's offer had counsel advised him correctly; (2) the prosecutor would not have withdrawn the offer; (3) the court would have accepted the offer; and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. *Id.* at 430.

At the evidentiary hearing on Mongo's motion, his trial counsel testified that Mongo rejected the 15-year plea offer because Mongo perceived it to be the equivalent of a life sentence. Mongo was 62 years old at the time. Mongo also believed that a key witness would not show up at trial and testify. Under these circumstances, the postconviction court did not err in concluding that there was no reasonable probability that Mongo would have accepted the plea offer had he been properly advised of the mandatory minimum life sentence. The order denying Mongo's postconviction motion is AFFIRMED.

ROWE, MAKAR, and JAY, JJ., concur.

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*Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.*

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Carlus L. Haynes, Orlando, for Appellant.

Ashley Moody, Attorney General, and Steven E. Woods, Assistant Attorney General, Tallahassee, for Appellee.