

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**GLEN W. DAVIS,**  
Petitioner,

v.

**STATE OF FLORIDA,**  
Respondent.

No. 4D14-3721

CORRECTED OPINION

[February 18, 2015]

Petition alleging ineffective assistance of counsel to the Circuit Court for the Nineteenth Judicial Circuit, Okeechobee County; Robert E. Belanger, Judge; L.T. Case No. 472011CF000654A.

Glen W. Davis, Jasper, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Laura Fisher, Assistant Attorney General, West Palm Beach, for respondent.

PER CURIAM.

In response to this Court's order to show cause, the State acknowledges that our decision in *Wimberly v. State*, 39 Fla. L. Weekly D1884 (Fla. 4th DCA Sept. 3, 2014), requires remand. For the same reasons discussed in *Wimberly*, we conclude that appellate counsel was ineffective in failing to argue fundamental error regarding the flawed attempted voluntary manslaughter jury instruction.

The petition alleging ineffective assistance of appellate counsel is granted. Because a new appeal would be redundant, we vacate the attempted second-degree murder conviction and remand for a new trial.

*Petition granted.*

MAY, CIKLIN and LEVINE, JJ., concur.

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***Not final until disposition of timely filed motion for rehearing.***