

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GARY R. MCGRIFF,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D17-1111

[October 25, 2017]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Cynthia L. Cox, Judge; L.T. Case No. 312009-CF-001615A.

Gary R. McGriff, Jasper, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Matthew Steven Ocksrider, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Gary Richard McGriff appeals an order summarily denying his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief alleging ineffective assistance of counsel. We reverse and remand for further review of appellant's claim that he rejected a favorable plea offer because counsel failed to advise that he qualified for enhanced sentencing as a habitual felony offender.

Appellant was convicted of burglary following a jury trial. The trial court sentenced him to a twenty year prison term as a habitual felony offender (HFO) and as a prison releasee reoffender (PRR).

Appellant timely filed a rule 3.850 raising fourteen claims. In ground one, appellant claimed that trial counsel was ineffective for misadvising him to reject a favorable plea offer to a fifteen year term. Appellant alleged that when he rejected that plea, counsel told him that his maximum exposure following trial was a fifteen year prison term. More specifically, counsel failed to advise appellant that he qualified for HFO sentencing and its consequences, which permitted the twenty year prison term for the

second degree felony. § 775.084(4)(a), Fla. Stat. (2012).

We find appellant's claim is sufficient and not refuted by the record. *Alcorn v. State*, 121 So. 3d 419 (Fla. 2013); *Paul v. State*, 198 So. 3d 999 (Fla. 4th DCA 2016). Accordingly, we reverse the trial court's summary denial of the claim and remand for it to either attach records conclusively refuting appellant's claim, or in the alternative, to hold an evidentiary hearing. We affirm the summary denial of appellant's remaining grounds without further discussion.

Affirmed in part, reversed in part and remanded.

TAYLOR, DAMOORGIAN and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.