

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2007*

**ANTHONY MURPHY,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D02-399

July 18, 2007

**ON REMAND FROM  
THE FLORIDA SUPREME COURT**

PER CURIAM.

Anthony Murphy sought review of the summary denial of his motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. In 2002, we reversed and remanded, relying on cases holding that affirmative misadvice, regarding even collateral consequences of a plea, may form the basis for withdrawing the plea. *Murphy v. State*, 820 So. 2d 375 (Fla. 4th DCA 2002). At issue was Murphy's claim of misadvice that his 1984 plea could not be used as a basis for enhancing a sentence for a future crime.

At the time we decided *Murphy*, there was conflict among the districts on this point. See *Murphy*, 820 So. 2d at 376. The Florida Supreme Court accepted review of *Murphy* in light of that conflict and stayed review of this case. After issuing related decisions in *Bates v. State*, 887 So. 2d 1214 (Fla. 2004), and *State v. Dickey*, 928 So. 2d 1193 (Fla. 2006), the supreme court quashed our decision and remanded for reconsideration in light of *Dickey*. See *State v. Murphy*, 32 Fla. L. Weekly S181 (Fla. Apr. 26, 2007).

In *Dickey*, the supreme court "conclude[d] that allegations of affirmative misadvice by trial counsel on the sentence-enhancing consequences of a defendant's plea for future criminal behavior in an otherwise facially sufficient motion are *not* cognizable as an ineffective assistance of counsel claim." *Id.* at 1198. Because Murphy's claim of

ineffective assistance of counsel in this case is not cognizable, we affirm the trial court's order.

SHAHOOD, C.J., STONE and TAYLOR, JJ., concur.

\* \* \*

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Peter M. Weinstein, Judge; L.T. Case No. 84-673 CF10C.

Anthony Murphy, Miami, pro se.

Bill McCollum, Attorney General, Tallahassee, Donna M. Hoffmann and Diane F. Medley, Assistant Attorneys General, West Palm Beach, for appellee.

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