

Third District Court of Appeal

State of Florida, January Term, A.D. 2008

Opinion filed February 20, 2008.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-1970

Lower Tribunal No. 02-32092

Rodney R. Heild,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jacqueline H. Scola, Judge.

Rodney R. Heild, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, GREEN, and RAMIREZ, JJ.

PER CURIAM.

This is an appeal of an order summarily denying a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. We reverse for further proceedings.

Defendant-appellant Rodney R. Heild filed a rule 3.850 motion alleging that his trial counsel had been ineffective in connection with a motion to suppress evidence which was heard prior to the defendant's trial. The motion includes other claims as well. The trial court denied the motion in its entirety, saying that the defendant represented himself pro se in his trial proceedings, and therefore could not claim ineffective assistance of counsel. The defendant has appealed.

The defendant's rule 3.850 motion asserts that he was represented by counsel in his trial proceedings from the start of the case up through and including the hearing on the motion to suppress evidence. We have taken judicial notice of the briefs in the defendant's direct appeal, this Court's file number 3D04-1430, where the State's brief appears to make the same point.

Given the foregoing, the postconviction record does not conclusively refute the defendant's claims. See Fla. R. App. P. 9.141(b)(2)(D). We reverse the order now before us and remand the matter for further consideration and entry of an appropriate order on the motion.

Reversed and remanded for further proceedings consistent herewith.