

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed April 13, 2011.

Not final until disposition of timely filed motion for rehearing.

No. 3D11-171

Lower Tribunal No. 08-29237

William Lovett,
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, Spencer Eig, Judge.

William Lovett, in proper person.

Pamela Jo Bondi, Attorney General, for appellee.

Before GERSTEN, WELLS, and CORTIÑAS, JJ.

PER CURIAM.

William Lovett appeals from an order summarily denying his motion to withdraw plea under Florida Rule of Criminal Procedure 3.170(l). We reverse.

In exchange for his guilty plea in case F08-29237 and his admission of probation violation in case F94-17832, the trial court sentenced Lovett to twenty years in state prison as a habitual violent felony offender, with a fifteen-year minimum-mandatory sentence as a prison releasee reoffender, followed by five years reporting probation as a habitual violent offender. Lovett received all credit for time served on his probation violation case, and the court waived the thirty-year minimum-mandatory sentence as a violent career criminal. The sentence was not coterminous.

Thereafter, Lovett moved to withdraw his plea, alleging that his counsel had advised him that the sentence would be coterminous. Lovett claimed that had he known that the sentence would not be coterminous, he would not have accepted the plea offer. Lovett also filed a motion to appoint conflict-free counsel. The trial court denied Lovett's motions, and this appeal ensued.

On appeal, Lovett asserts that the trial court erred in summarily denying his motion to appoint conflict-free counsel and in failing to conduct an evidentiary hearing on his motion to withdraw his plea. The State contends that the trial court properly denied the motions because the plea colloquy shows that Lovett intelligently and voluntarily entered his plea. We agree with Lovett.

It is well settled that when a rule 3.170(*l*) motion to withdraw a plea shows a conflict between the defendant and his counsel, the trial court should appoint

conflict-free counsel to assist the defendant. Wendt v. State, 19 So. 3d 1024, 1026 (Fla. 3d DCA 2009). Moreover, “a defendant is entitled to an evidentiary hearing on a postconviction relief motion unless (1) the motion, files, and records in the case conclusively show that the prisoner is entitled to no relief, or (2) the motion or a particular claim is legally insufficient.” Freeman v. State, 761 So. 2d 1055, 1061 (Fla. 2000).

Here, Lovett alleged that his counsel misinformed him about the terms of the sentence offered in exchange for his plea. Thus, since there was a conflict between Lovett and his counsel, Lovett was entitled to conflict-free counsel to assist him with his motion to withdraw the plea.

Further, although the trial court told Lovett the term of years of the proposed sentence, the transcript of the plea colloquy is silent regarding whether the sentence would be coterminous. Therefore, since the plea colloquy does not refute Lovett’s allegations of counsel’s misadvice, the trial court should have conducted an evidentiary hearing to determine the issue.

Accordingly, we reverse the orders denying Lovett’s motion to withdraw plea and motion to appoint conflict-free counsel. On remand, the trial court should appoint conflict-free counsel for Lovett, and should conduct an evidentiary hearing on the motion to withdraw.

Reversed and remanded with instructions.