

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

MICHAEL JOHNS,

Appellant,

v.

Case No. 5D19-2883

STATE OF FLORIDA,

Appellee.

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Opinion filed July 31, 2020

3.850 Appeal from the Circuit  
Court for Citrus County,  
Richard A. Howard, Judge.

James S. Purdy, Public Defender, and  
Robert Jackson Pearce, III, Assistant Public  
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Richard A. Pallas, Jr.,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Michael Johns again appeals the denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We previously reversed on claim three, remanding for an evidentiary hearing on whether trial counsel's failure to object to comments the trial judge made at sentencing constituted ineffective assistance. See

*Johns v. State*, 273 So. 3d 214, 214 (Fla. 5th DCA 2019). We directed the trial court to “decide whether Johns has established that his counsel’s performance was deficient and if he was prejudiced as a result.” *Id.* (citing *Grosvenor v. State*, 874 So. 2d 1176, 1178 (Fla. 2004)). We again reverse because the trial court did not follow this directive. See *Strickland v. Washington*, 466 U.S. 668 (1984). The trial court based its ruling on trial counsel’s subjective perception that the court’s comments were not a basis for Johns’s sentence. Trial counsel’s performance, however, is measured by an objective standard. *Sierra v. State*, 230 So. 3d 48, 51 (Fla. 2d DCA 2017). This matter is remanded for a de novo evidentiary hearing<sup>1</sup> before a new judge, who should apply *Strickland* to determine whether counsel was deficient and if Johns was prejudiced as a result.

REVERSED and REMANDED.

ORFINGER and WALLIS JJ., concur.

TRAVER, J., concurs in the result.

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<sup>1</sup> If Johns remains indigent for this hearing, the successor postconviction court should appoint him counsel.