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

ALONZA HENRY,

Appellant,

v. Case No. 5D20-794

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed October 30, 2020

3.850 Appeal from the Circuit Court
for Volusia County,
Matthew M. Foxman, Judge.

Alonza Henry, Live Oak, pro se.

Ashley Moody, Attorney General, Tallahassee, and Kristen L. Davenport, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

Alonza Henry appeals the postconviction court's summary denial of his Florida Rule of Criminal Procedure 3.850 amended motion for postconviction relief. Concluding that Henry sufficiently pleaded a claim for relief in ground five of his amended motion that was not conclusively refuted by the records attached to the court's order, we reverse the

denial of this ground. We affirm, without further discussion, the summary denial of the remaining grounds asserted in the motion.

Henry was prosecuted in two separate cases below. He was charged in the first case with burglary of an unoccupied structure. In the second case, he was charged with burglary while armed, possession of a firearm by a convicted felon, grand theft, and grand theft of a firearm. Henry tendered a no contest plea in the first case to burglary of an unoccupied structure and a no contest plea in the second case to the reduced charge of burglary of an unoccupied structure and to the charge of grand theft of a firearm. The other counts in the second case were dismissed. The trial court imposed concurrent fifteen-year prison sentences for Henry's burglary convictions and a concurrent term of five years' imprisonment for the grand theft of a firearm conviction.

Henry's present amended postconviction motion seeks relief based on the alleged ineffective assistance of his trial counsel. Under *Strickland v. Washington*, 466 U.S. 668 (1984), to prevail on such a claim, a defendant must show that counsel's performance was deficient, *id.* at 688, and that this deficient performance prejudiced the defendant. *Id.* at 691–92. This two-pronged test for ineffective assistance of counsel claims similarly applies to cases resolved by either a guilty or a no contest plea. *See Guzman-Aviles v. State*, 226 So. 3d 339, 343 (Fla. 5th DCA 2017) (citing *Hill v. Lockhart*, 474 U.S. 52, 57–59 (1985)). To establish the prejudice prong in cases involving a plea, the movant must show "a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial." *Grosvenor v. State*, 874 So. 2d 1176, 1179 (Fla. 2004) (quoting *Hill*, 474 U.S. at 59). In analyzing whether this

"reasonable probability" exists, the *Grosvenor* court provided that the postconviction court should consider:

> [T]he totality of the circumstances surrounding the plea, including such factors as whether a particular defense was likely to succeed at trial, the colloquy between the defendant and the trial court at the time of the plea, and the difference between the sentence imposed under the plea and the maximum possible sentence the defendant faced at a trial.

Id. at 1181–82.

Ground five of Henry's amended motion essentially asserted that his counsel failed to make a reasonable investigation into facts that would have supported defenses to the charges. *See Minix v. State*, 259 So. 3d 927, 928–29 (Fla. 5th DCA 2018) ("A trial attorney's failure to investigate a factual defense . . . which results in the entry of an ill-advised plea of guilty, has long been held to constitute a facially sufficient attack upon the conviction." (quoting *Guzman-Aviles*, 226 So. 3d at 342)). Henry alleged that the money found in his possession upon arrest and thereafter confiscated by law enforcement was in fact given to him by his father and was not taken by him from the victim's residence. Henry averred that had counsel conducted a sufficient investigation to establish this defense, he would not have tendered his no contest pleas and instead would have insisted on going to trial.

To summarily deny a rule 3.850 motion alleging a claim of ineffective assistance of counsel that has been sufficiently pleaded, the claim must be conclusively refuted either as a matter of law or by reliance upon the records in the case. In the latter circumstance, the court must attach to its order a copy of those portions of the record that show that the defendant is not entitled to relief. *See* Fla. R. Crim. P. 3.850(f)(5). Further, in cases where, as here, no evidentiary hearing is held on the motion, an appellate court

must accept the defendant's factual allegations contained in the motion to the extent that they are not conclusively refuted by the record. *See Nordelo v. State*, 93 So. 3d 178, 184 (Fla. 2012) (quoting *Hamilton v. State*, 875 So. 2d 586, 591 (Fla. 2004)).

The record attachments to the instant denial order were copies of the two informations filed, defense counsel's notices of appearance, the transcript from Henry's bond reduction hearing, and the court action forms from that hearing. None of these documents refutes the claim raised in ground five of Henry's amended motion. Notably, a copy of the transcript from the plea colloquy—which, under *Grosvenor*, is a factor to be considered by the postconviction court in determining whether there exists a reasonable probability that but for counsel's alleged errors, Henry would not have pleaded no contest and instead would have chosen to proceed to trial—was not attached to the denial order.

Accordingly, we reverse the summary denial of ground five of Henry's amended rule 3.850 motion for postconviction relief. We remand for the postconviction court either to attach to its order additional records that conclusively refute this claim or to hold an evidentiary hearing.

AFFIRMED, in part; REVERSED, in part; REMANDED with directions.

WALLIS, LAMBERT, and EISNAUGLE, JJ., concur.