

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

MATTHEW COLLITO,

Petitioner,

v.

Case No. 5D20-1766

STATE OF FLORIDA,

Respondent.

_____ /

Opinion filed November 20, 2020

Petition Alleging Ineffectiveness of
Appellate Counsel,
A Case of Original Jurisdiction.

Matthew Collito, Bowling Green, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Respondent.

PER CURIAM.

Matthew Collito petitions this Court for a writ of habeas corpus pursuant to Florida Rule of Appellate Procedure 9.141(d), alleging ineffective assistance of appellate counsel.

In the underlying proceedings, Collito was charged with a version of sexual battery that involved a victim under the age of twelve and a defendant under the age of eighteen. He subsequently entered into a plea agreement, but the judgment reflected a version of

sexual battery involving a defendant over the age of eighteen. It is undisputed that Collito was under the age of eighteen at the time of the offense. In his direct appeal, Collito's appellate counsel filed an Anders¹ brief, which did not address the discrepancy in the judgment, and this Court per curiam affirmed. See Collito v. State, 291 So. 3d 111 (Fla. 5th DCA 2020).

Despite the judgment reflecting an incorrect version of sexual battery, we deny Collito's petition. Because he entered a plea, the issues cognizable in his direct appeal were limited. § 924.06(3), Fla. Stat. (2019); Fla. R. App. P. 9.140(b)(2)(A)(i)–(ii).² Having failed to meet any of the delineated grounds to appeal from his plea, Collito cannot establish that appellate counsel was ineffective. See Valle v. Moore, 837 So. 2d 905, 908 (Fla. 2002) (noting that appellate counsel cannot be considered ineffective for failing to raise non-meritorious claims on appeal). Instead, Collito's remedy, if any, is under Florida Rule of Criminal Procedure 3.850, through a petition alleging ineffective assistance of trial counsel. Fla. R. Crim. P. 3.850.

Accordingly, we deny the petition without prejudice to Collito filing a timely and facially sufficient motion under rule 3.850.

PETITION DENIED.

ORFINGER, COHEN and EDWARDS, JJ., concur.

¹ Anders v. California, 386 U.S. 738 (1967).

² Review in plea cases is limited to: 1) issues in an express reservation; 2) subject matter jurisdiction; 3) involuntary plea, if preserved by motion to withdraw plea; 4) sentencing error preserved by timely objection or Florida Rule of Criminal Procedure 3.800(b) motion; 5) violation of plea agreement, if preserved by motion to withdraw plea; or 6) "as otherwise provided by law." § 924.06(3), Fla. Stat.; Fla. R. App. P. 9.140(b)(2)(A)(i)–(ii).