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

GEOFFREY HYACINTHE,

Appellant,

v. Case No. 5D21-312

STATE OF FLORIDA,

Appellee.

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Opinion filed September 17, 2021

Appeal from the Circuit Court
for Seminole County,
Melissa Souto, Judge.

Matthew J. Metz, Public Defender, and Teresa D. Sutton, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Nora Hutchinson Hall, Assistant Attorney General, Daytona Beach, for Appellee.

COHEN, J.

Geoffrey Hyacinthe appeals his judgment and sentence following the entry of a plea agreement, which adjudicated him guilty of three counts of

possession of child pornography and sentenced him to 42 months in prison on each count, to run concurrently.[1] The issue on appeal is whether the trial court erred in failing to conduct a Nelson[2] hearing despite Hyacinthe's repeated requests to do so. For the reasons discussed below, we reverse.

Hyacinthe sent three letters to the trial court expressing dissatisfaction with his appointed counsel and requesting a Nelson hearing to address counsel's purported ineffectiveness.[3] The crux of his letters claimed that counsel had not been providing him with evidence relating to his case, including a report containing the grounds for the search warrant that led to the discovery of incriminating evidence. Further, Hyacinthe expressed concern that counsel had failed to retain a forensic expert to conduct a review of his computer and had failed to inform him of details regarding plea discussions with the State.[4]

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[1] Hyacinthe was originally charged by information with 21 counts of possession of child pornography, which carried a potential sentence of over 300 years in prison.

[2] Nelson v. State, 274 So. 2d 256 (Fla. 4th DCA 1973).

[3] Hyacinthe also made an open-court request for a Nelson hearing, but that request was largely generic.

[4] Although counsel represented that an expert had reviewed Hyacinthe's computer, no report reflecting that review had been provided to him.

In his last letter, Hyacinthe explained that counsel had reacted aggressively after learning that he had complained to counsel's supervisor about the alleged ineffectiveness. Hyacinthe noted that their relationship was "beyond repairs" and that he feared he would not receive a fair trial. Despite those concerns, the trial court never held a Nelson hearing.

We review the trial court's decision on whether to conduct a Nelson hearing for an abuse of discretion. See Boaz v. State, 135 So. 3d 506, 507 (Fla. 5th DCA 2014) (citations omitted). "A trial court must conduct a Nelson hearing only when a defendant's actions satisfy a three-prong test: 'the defendant makes a "clear and unequivocal" statement that he wishes to discharge appointed counsel, the discharge request is based on a claim of incompetence, and the alleged ineffectiveness arises from counsel's current representation.'" Id. (quoting Laramee v. State, 90 So. 3d 341, 344 (Fla. 5th DCA 2012)). A defendant's general complaints of dissatisfaction are insufficient to trigger the requirement of a Nelson hearing. See Morrison v. State, 818 So. 2d 432, 440 (Fla. 2002) ("[A] trial court does not err in failing to conduct a Nelson inquiry where the defendant merely expresses dissatisfaction with his attorney." (citations omitted)).

The record demonstrates that Hyacinthe did more than simply express general dissatisfaction with his counsel. His requests to discharge counsel

were clear and unequivocal, and his allegations of incompetence were sufficiently specific to warrant further inquiry. See id. Had the trial court conducted a hearing, counsel could have explained what efforts, if any, he had taken to address Hyacinthe's complaints.

As a result, we reverse and remand for the trial court to conduct a Nelson hearing to determine whether conflict-free counsel is necessary to file a motion to withdraw Hyacinthe's plea. Boaz, 135 So. 3d at 508. However, Hyacinthe should be cautioned that a successful withdrawal of his plea agreement would leave him facing a 21-count information with potential exposure to over 300 years in prison, as opposed to his negotiated plea of 42 months' imprisonment on only three counts. That decision is his to make.[5]

JUDGMENT AND SENTENCE VACATED; REMANDED.

WALLIS and NARDELLA, JJ., concur.

[5] We note the State's misrepresentation in its brief that Hyacinthe had expressed satisfaction with his counsel's representation during the course of his plea colloquy. That question was never asked by the trial court, nor did Hyacinthe make such a statement.