

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

JULY TERM 2004

JAMES A. MCCLINTON,

Appellant,

v.

CASE NO. 5D03-3743

STATE OF FLORIDA,

Appellee.

Opinion Filed August 13, 2004

3.850 Appeal from the Circuit Court
for Orange County,
Frank N. Kaney, Senior Judge.

James A. McClinton, Sneads, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee,
and Judy Taylor Rush, Assistant Attorney General,
Daytona Beach, for Appellee.

GRIFFIN, J.

James A. McClinton ["McClinton"] appeals pro se the denial of his motion for post-conviction relief. In 2001, McClinton had been charged by amended information with second-degree murder with a weapon. After a jury found him guilty as charged, he was sentenced to life imprisonment. We find no merit in any of the several post-conviction issues he has raised.

The trial court did not abuse its discretion in denying McClinton's motion for appointment of counsel for the post-conviction evidentiary hearing. There is no right to

counsel in post-conviction proceedings and the issues involved did not require the help of counsel to develop.

McClinton did not demonstrate deficient performance of trial counsel for failure to call a witness, Tony Frazier. Counsel testified that Tony Frazier repeatedly denied being present during the incident. Nor did the trial court err in summarily denying the claims in the motion asserting that counsel was ineffective for failure to impeach the medical examiner's testimony or for failure to introduce evidence regarding the victim's alleged intoxication as she reported to multiple persons who came to her aid that McClinton had hit her with a "two-by-four." These claims were conclusively refuted by the record. Finally, the trial court correctly summarily denied McClinton's claim that counsel was ineffective for failing to challenge the State's peremptory strike of an African-American juror. This claim was both facially insufficient and conclusively refuted by the record.

AFFIRMED.

THOMPSON and ORFINGER, JJ., concur.