

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

JULY TERM 2007

RALPH XAVIER PEREZ,

Appellant,

v.

Case No. 5D06-1315

STATE OF FLORIDA,

Appellee.

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Opinion filed August 10, 2007.

3.850 Appeal from the Circuit  
Court for Orange County,  
Richard F. Conrad, Judge.

John C. Allen, Jr., Ormond Beach,  
for Appellant.

Bill McCollum, Attorney General,  
Tallahassee, and Lori N. Hagan, Assistant  
Attorney General, Daytona Beach, for  
Appellee.

PER CURIAM.

AFFIRMED. See Sanders v. State, 946 So. 2d 953, 959-60 (Fla. 2006) ("[A]ny finding of prejudice resulting from defense counsel's failure to request an instruction on lesser-included offenses necessarily would be based on a faulty premise: that a reasonable probability exists that, if given the choice, a jury would violate its oath, disregard the law, and ignore the trial court's instructions."); Cottle v. State, 733 So. 2d 963, 967 (Fla. 1999) (holding claimant must allege "counsel failed to communicate a

plea offer or misinformed defendant concerning the penalty faced"); Szymanowski v. State, 771 So. 2d 10, 11 (Fla. 4th DCA 2000) ("Misinformation by counsel affecting a defendant's decision to accept a plea may constitute ineffective assistance of counsel under certain circumstances. However, appellant has not indicated the basis of any misinformation or misadvice (i.e., what erroneous information he received from counsel which caused him to accept the plea offer and not proceed to trial).").

PALMER, C.J., THOMPSON and SAWAYA, JJ., concur.