

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-4413

JEFFERY WILSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Marianne L. Aho, Judge.

October 23, 2019

PER CURIAM.

On appeal, we review the postconviction court's summarily denied order on the appellant's motion for postconviction relief. In his motion for postconviction relief, the appellant raised ten grounds of ineffective assistance of counsel. We find no error except with regards to grounds C and J, which are related. Because the record does not refute the appellant's claim, we must reverse and remand the case back to the postconviction court for it to hold an evidentiary hearing.

In grounds C and J, the appellant alleged that trial counsel was ineffective for failing to review his scoresheet with him, and had he have known his lowest permissible sentence based on the scoresheet, he would not have entered an open plea. When no

evidentiary hearing is held below, this Court must accept the appellant's factual allegations as true to the extent they are not refuted by the record. *McLin v. State*, 827 So. 2d 948, 954 (Fla. 2002). Because the record on appeal does not refute the appellant's factual allegations on grounds C and J, we must reverse and remand the case back to the postconviction court for it to hold an evidentiary hearing on those grounds. See Fla. R. App. P. 9141(b)(2)(D). We otherwise affirm the postconviction court's order.

AFFIRMED in part, REVERSED in part, and REMANDED with instructions.

ROBERTS and ROWE, JJ., concur; KELSEY, J., dissents without opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jeffery Wilson, pro se, Appellant.

Ashley Moody, Attorney General, and Anne C. Conley, Assistant General Counsel, Tallahassee, for Appellee.