

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1240

KIMBERLY HARTFIELD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jennie Kinsey, Judge.

February 4, 2021

PER CURIAM.

Appellant, Kimberly Hartfield, entered an open plea of nolo contendere to grand theft and bank fraud. The trial court imposed an aggregate sentence of six years followed by nine years of probation. Following her conviction, Appellant filed a pro se motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. The motion alleged that trial defense counsel was ineffective for failing to convey a plea deal from the State for thirty-six months of incarceration. Appellant requested an evidentiary hearing and to be appointed counsel. The trial court ordered an evidentiary hearing but denied the request for appointment of counsel. After the evidentiary hearing, the postconviction court denied the motion. Appellant now appeals the

denial of her postconviction claim and the trial court's denial of her request for counsel. We affirm.

I.

A trial court's order denying a motion to appoint postconviction counsel in a noncapital case is reviewed for abuse of discretion. *Wheeler v. State*, 807 So. 2d 94, 96 (Fla. 1st DCA 2002). When deciding whether to appoint counsel for a postconviction motion, the trial court should consider: (1) the adversary nature of the proceeding; (2) its complexity; (3) the need for an evidentiary hearing and; (4) the need for substantial legal research. *Williams v. State*, 472 So. 2d 738, 740 (Fla. 1985).

Here, the issue was a dispute about whether a plea offer existed. The issue was purely factual, was not overly complex, and did not require substantial legal research. Therefore, the trial court did not abuse its discretion by denying the request for counsel. *See Ladson v. State*, 829 So. 2d 305, 307 (Fla. 5th DCA 2002) (affirming a trial court's refusal to appoint postconviction counsel where "the issue was a simple, factual one" and "[n]o legal research was required nor was this a complex legal proceeding").

II.

Appellant asserts that her defense counsel never advised her of a plea offer from the State for thirty-six months of incarceration. Trial defense counsel testified that the State never made such an offer and Appellant presented no evidence to the contrary.

The postconviction court denied Appellant's claim, finding that Appellant demonstrated neither ineffective assistance nor prejudice to satisfy the two-part *Strickland* test for ineffective assistance of counsel claims. *See Strickland v. Washington*, 466 U.S. 668, 687–89 (1984). The postconviction court found trial defense counsel's testimony credible and that the plea offer never existed. That finding is supported by competent, substantial evidence. *See Porter v. State*, 788 So. 2d 917, 923 (Fla. 2001) ("So long as [the trial court's] decisions are supported by competent, substantial evidence, [an appellate court] will not substitute its judgment for that of the trial court on questions of fact and,

likewise, on the credibility of the witnesses and the weight to be given to the evidence by the trial court.”).

AFFIRMED.

ROWE, OSTERHAUS, and LONG, JJ., concur.

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

Kimberly Hartfield, pro se, Appellant.

Ashley Moody, Attorney General, and David Welch, Assistant Attorney General, Tallahassee, for Appellee.