

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GREGORY BEENE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-1750

[November 9, 2016]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert E. Belanger, Judge; L.T. Case No. 562014CF002916A.

Gregory Beene, Sneads, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Joseph D. Coronato, Jr., Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Gregory Beene appeals the summary denial of his motion for postconviction relief, filed pursuant to Florida Rule of Criminal Procedure 3.850. In his motion, Beene alleged that his open plea of no contest to a single count of lewd and lascivious exhibition was rendered involuntary because his counsel misadvised him regarding the sentence that would be imposed. Specifically, he claims that counsel advised him that he would be sentenced to 3 years in prison followed by 3 years of probation, but the trial court ultimately imposed a 10-year sentence followed by 5 years of probation.

The record on appeal contains Beene's signed plea form, which states that Beene's counsel would be recommending a sentence of up to 10 years in prison. However, the record does not contain a transcript of Beene's plea colloquy to establish that he read and understood the plea form.

The State concedes, and we agree, that a signed plea form is not alone sufficient to conclusively refute Beene's claim. *Townsend v. State*, 927 So. 2d 1064, 1066 (Fla. 4th DCA 2006) (holding that a signed plea form,

without a colloquy to establish that defendant read and understood the contents of the form, was insufficient to conclusively refute defendant's claim that he was not advised regarding the sentence to be imposed).

We therefore reverse and remand the order summarily denying Beene's motion with instructions for the trial court to either attach records conclusively refuting Beene's claim or, in the alternative, conduct an evidentiary hearing.

Reversed and Remanded.

TAYLOR, MAY and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.