

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

BRYAN GORDON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D12-3128

[May 18, 2016]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Dan L. Vaughn, Judge; L.T. Case No. 2005CF000797A.

Carey Haughwout, Public Defender, and Ellen Griffin, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cynthia L. Comras, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Bryan Gordon appeals the denial of a rule 3.850 motion following an evidentiary hearing. Gordon's motion raised five claims. The trial court granted an evidentiary hearing on claims 1 through 4. Following the hearing, the court granted relief on claim 2, ordering resentencing. The court denied claims 1, 3, and 4 and "all other requested relief." Although the court did not expressly discuss claim 5, we conclude that it was summarily denied, and because the claim was insufficient, we affirm.

In claim 5, appellant alleged his attorneys were ineffective for filing a motion to mitigate his sentence rather than a rule 3.170(l) motion to withdraw his plea. Appellant alleged that he was prejudiced by counsel filing the wrong motion because the issue was not preserved for appeal. Counsel's failure to preserve an issue for appeal does not show the prejudice necessary to establish an ineffective assistance of counsel claim under *Strickland v. Washington*, 466 U.S. 668 (1984). *Strobridge v. State*, 1 So. 3d 1240, 1242 (Fla. 4th DCA 2009). *Strickland* prejudice focuses on the proceeding being challenged, here the plea proceedings in the trial

court. See *Strobridge*, 1 So. 3d at 1242 (discussing *Carratelli v. State*, 961 So. 2d 312 (Fla. 2007)). Appellant did not demonstrate through his other claims or any additional allegations that withdrawal of his plea was necessary to correct a manifest injustice and that there was a reasonable probability a rule 3.170(l) motion would have been granted.

We affirm the summary denial of claim 5 and affirm without comment the denial of the other claims.

Affirmed.

GROSS, LEVINE and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.