

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

WILLIAM WALLACE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D04-1575

[July 20, 2005]

On Motion for Rehearing

PER CURIAM.

The motion for rehearing is denied.

GUNTHER and POLEN, JJ., concur.
WARNER, J., dissents with opinion.

WARNER, J., dissenting.

Appellant filed a Florida Rule of Criminal Procedure 3.850 motion for postconviction relief, which was summarily denied. Upon further reconsideration on motion for rehearing, I would reverse and remand for an evidentiary hearing on appellant's contention that his attorney affirmatively misadvised him to plead guilty to armed kidnapping when there was no factual basis for that charge. The facts showed that appellant and his co-defendant approached the victim in a vehicle. The co-defendant grabbed the chain on the victim's neck and as he did so, appellant sped off. The victim was dragged, half in the car, half out, for about a block before the chain broke and the victim fell to the pavement. This would be insufficient to constitute kidnapping under the three-prong test of *Faison v. State*, 426 So. 2d 963 (Fla. 1983). Appellant pled guilty based upon the advice of his counsel, and the motion and attachments are sufficient to raise the issue of whether counsel was ineffective on this ground.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ana I. Gardiner, Judge; L.T. Case Nos. 02-6854 CF10B, 02-9018 CF10A, 02-9019 CF10A, 02-9020 CF10A, 02-9486 CF10A & 02-11400 CF10A.

William Wallace, Clermont, pro se.

No appearance required for appellee.