

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

JIMMY MCDOWELL,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D04-4127

[June 29, 2005]

PER CURIAM.

Jimmy McDowell appeals the trial court's summary denial of his Florida Rule of Criminal Procedure 3.850 motion for post-conviction relief. The motion raised several claims of ineffective assistance of counsel. We reverse and remand for the trial court's further review of points four and five.

Point four concerns McDowell's claim that his trial counsel interfered with his right to testify by threatening to withdraw from the case. Point five presents McDowell's claim that counsel failed to advise him, at the time he was considering a favorable plea offer, of potential prison releasee reoffender sentencing. He alleged that he would have accepted the state's plea offer had he known he was facing a life sentence as a prison releasee reoffender. The state concedes that McDowell's claim on this point is legally sufficient and warrants further review. We find that both claims are legally sufficient and remand for an evidentiary hearing. *Oisorio v. State*, 676 So.2d 1363, 1364-65 (Fla.1996); *Kleppinger v. State*, 884 So.2d 146 (Fla. 2d DCA 2004).

GUNTHER, STEVENSON and TAYLOR, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Stephen A. Rapp, Judge; L.T. Case No. 97-11653 CFA02.

Jimmy McDowell, Belle Glade, pro se.

Charles J. Crist, Jr., Attorney General, Tallahassee, and David M. Schultz, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.