

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

MORRIS WILLIAMS, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D19-128

Opinion filed May 13, 2020.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for Lee  
County; Joseph C. Fuller, Jr., Judge.

Morris Williams, pro se.

ATKINSON, Judge.

Morris Williams appeals the summary denial of his Florida Rule of Criminal Procedure 3.850 motion for postconviction relief, in which he raised seven claims. We reverse on ground two and remand for further proceedings. As to the other grounds, we affirm without comment.

In ground two of his motion, Mr. Williams claimed that counsel was ineffective for failing to file a motion to disqualify Judge Volz for bias and conflict of interest. He argued that Judge Volz made comments prior to, and after, a hearing on

Mr. Williams' dispositive motion to suppress in which defense counsel challenged whether there was probable cause to obtain a search warrant.

Mr. Williams alleged that Judge Volz asked defense counsel, "Do you want a denial now?" before the suppression hearing began. The transcript of the hearing on Mr. Williams' motion to dismiss reveals the following exchange:

THE COURT: Good afternoon, Mr. Molloy.

MR. MALLOY: Wait for my client?

THE COURT: If you wish or do you want a denial now?

MR. MALLOY: No, sir, I prefer to wait for my client to be present when that happens.

Based on an attached affidavit of Mr. Williams' fiancé—who averred that she was privy to a posthearing, off-the-record conversation between the judge and defense counsel—Mr. Williams alleged that the judge asked defense counsel after denying his motion, "What else could I do? His father's office was next to mine for [thirty] years," referring to the father of the judge who signed the warrant. Mr. Williams claimed that had the motion to disqualify had been filed, it would have been granted.

"When reviewing the summary denial of a motion for postconviction relief, this court applies de novo review and 'must accept the movant's factual allegations as true to the extent that they are not refuted by the record.'" Martin v. State, 205 So. 3d 811, 812 (Fla. 2d DCA 2016) (quoting Jennings v. State, 123 So. 3d 1101, 1121 (Fla. 2013)). To plead a facially sufficient claim for ineffective assistance of counsel, a defendant must plead sufficient facts to establish that his trial counsel's performance was deficient and that he was prejudiced thereby. Id. (citing Strickland v. Washington, 466 U.S. 668, 694 (1984)). To establish the deficiency prong, the defendant must show that counsel's "errors [were] so serious that counsel was not functioning as the 'counsel'

guaranteed the defendant by the Sixth Amendment." Hodges v. State, 885 So. 2d 338, 345 (Fla. 2004) (quoting Strickland, 466 U.S. at 687). To establish the prejudice prong, a defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

Mr. Williams' claim is facially insufficient because he failed to adequately allege prejudice. He did not explain why "the result of the proceeding has been rendered unreliable, and our confidence in the outcome of [the] proceeding has been undermined" by counsel's failure to file a motion to disqualify. See Thompson v. State, 990 So. 2d 482, 490 (Fla. 2008). In his postconviction motion, Mr. Williams did not elaborate at all on his motion to suppress, much less explain why there was a reasonable probability that it would have been granted if it had been heard by a different judge. See Strickland, 466 U.S. at 694; see also Wheeler v. State, 214 So. 3d 764, 766 (Fla. 5th DCA 2017) (holding that, although defendant adequately alleged counsel was ineffective for failing to file a legally sufficient motion to disqualify, the motion was insufficient as to prejudice because it "simply alleged, in a conclusory manner, that as a result of his counsel's ineffectiveness, he was subject to trial proceedings conducted by a 'biased' judge who bore animosity towards [defendant] and his counsel").

Despite the facial insufficiency of the claim, the postconviction court summarily denied it, based on the rationale that Judge Fuller, and not Judge Volz, presided over the jury trial. The trial court erred by summarily concluding that Mr. Williams' claim regarding Judge Volz's bias lacked merit on this basis, because the

claim was focused solely on the allegedly dispositive motion to suppress, which Judge Volz heard and denied.

Mr. Williams should have been given the opportunity to file an amended claim pursuant to rule 3.850(f)(3). See Spera v. State, 971 So. 2d 754, 762 (Fla. 2007) (holding that the trial court must allow a defendant the opportunity to amend a facially insufficient claim, but only if the claim can be amended in good faith). We reverse the postconviction court's order on ground two and remand for the court to allow Mr. Williams the opportunity to file an amended claim as to ground two, on which the trial court must hold an evidentiary hearing unless it is conclusively refuted by the record.

Affirmed in part, reversed in part, and remanded with instructions.

CASANUEVA and LUCAS, JJ., Concur.