

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

LOUIS LAROCCA, DOC #R84346,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
_____)

Case No. 2D19-3028

Opinion filed February 7, 2020.

Petition Alleging Ineffective Assistance of
Appellate Counsel. Pinellas County; Chris
Helinger, Judge.

Brett S. Chase of Chase Law Florida,
P.A., St. Petersburg, for Petitioner.

Ashley Moody, Attorney General,
Tallahassee, and Johnny T. Salgado,
Assistant Attorney General, Tampa, for
Respondent.

SALARIO, Judge.

In a timely petition filed under Florida Rule of Appellate Procedure
9.141(d), Louis Larocca alleges that his appellate counsel was ineffective for failing to
argue on direct appeal that the trial court erred by not appointing counsel or conducting
an inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975), before ruling on his
motion to withdraw his pleas. The State appropriately concedes error.

Mr. Larocca entered negotiated pleas to burglary charges in three different cases.¹ After he was sentenced, Mr. Larocca filed a pro se motion to dismiss his counsel and a pro se motion to withdraw his guilty pleas in which he alleged that he entered the pleas under duress and that his counsel did not explain the terms of the plea agreement, including the sentences. The trial court granted Mr. Larocca's trial counsel's subsequent motion to withdraw, and Mr. Larocca declined the court's offer to appoint counsel to represent him on the motion to withdraw his pleas. See generally Sheppard v. State, 17 So. 3d 275, 277, 287 (Fla. 2009) (discussing the limited hearings trial courts should conduct when a pro se motion to withdraw plea pursuant to Florida Rule of Criminal Procedure 3.170(l) is filed by an otherwise represented defendant, during which a court must determine whether an adversarial relationship exists such that conflict-free counsel should be appointed for the representation regarding the basis for withdrawing the plea).

When Mr. Larocca next appeared before the trial court at a status hearing, however, he changed course and accepted the court's offer to appoint counsel—essentially reasserting his right to counsel. The trial court scheduled a hearing before a different judge and directed Mr. Larocca to inform that judge that he wanted counsel. The transcript of the hearing before the different judge reflects that Mr. Larocca was not present—apparently due to some difficulty in having Mr. Larocca transported to the

¹Mr. Larocca pleaded guilty to armed burglary in case number 2015-CF-5519, to two counts of burglary of an unoccupied dwelling and one count of grand theft greater than \$100,000 in case number 2015-CF-6028, and to burglary of an unoccupied dwelling and grand theft greater than \$10,000 but less than \$20,000 in case number 2015-CF-6329.

court. After an unidentified speaker told the court that Mr. Larocca refused the appointment of counsel and informed the court that Mr. Larocca's motion was not available for review, the judge ruled that because the motion to withdraw was scheduled to be heard by the trial court, the trial court could determine whether to appoint conflict counsel.

When Mr. Larocca then appeared for the hearings on his motion to withdraw his guilty pleas, the trial court did not further inquire about his pro se status despite his having requested counsel, nor did it conduct a Faretta inquiry in the event that Mr. Larocca wished to continue to proceed pro se. Mr. Larocca represented himself during the evidentiary hearing on his motion to withdraw his pleas; the trial court denied the motion.²

"A motion to withdraw plea is a critical stage of the proceedings at which a defendant is entitled to be present and to have counsel represent him." Krautheim v. State, 38 So. 3d 802, 804 (Fla. 2d DCA 2010). Because "both case law and [Florida Rule of Criminal Procedure 3.111(d)(2)] require a trial court to inquire whether the defendant is knowingly and intelligently waiving the right to court-appointed counsel[,] a trial court's failure to do so constitutes reversible error." Goldsmith v. State, 937 So. 2d 1253, 1256 (Fla. 2d DCA 2006). Had Mr. Larocca's appellate counsel raised this error in Mr. Larocca's direct appeal, this court would have reversed the order denying Mr. Larocca's motion to withdraw his pleas and remanded with directions to appoint conflict-free counsel to advise and assist Mr. Larocca with his motion. See Krautheim, 38 So. 3d at 806; Smith v. State, 849 So. 2d 485, 486 (Fla. 2d DCA 2003). Moreover, because

²Although Mr. Larocca filed his motion to withdraw his pleas in all three cases, the trial court denied his motion only in case number 2015-CF-5519.

the record reflects that Mr. Larocca had attempted to reassert his right to the appointment of conflict counsel that the trial court had offered at the initial Sheppard hearing, appellate counsel similarly should have raised the trial court's failure to appoint that conflict counsel when it was requested. Accordingly, appellate counsel's omissions fall below prevailing professional norms and undermine confidence in the outcome of Mr. Larocca's direct appeal. See Downs v. Moore, 801 So. 2d 906, 909-10 (Fla. 2001). Consequently, we grant Mr. Larocca's petition.

Because a new appeal would serve no purpose—it being clear that the trial court committed reversible error—we reverse the order denying Mr. Larocca's motion to withdraw his pleas in case number 2015-CF-5519. The trial court shall either appoint conflict-free counsel to "advise and assist" Mr. Larocca with his motion or conduct the inquiry required by rule 3.111(d)(2) should he choose to represent himself. Smith, 849 So. 2d at 486. Should Mr. Larocca persist in seeking to withdraw his pleas, the trial court shall issue orders in each of his three cases.

Petition granted.

SILBERMAN and BADALAMENTI, JJ., Concur.