

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CHRISTOPHER JONES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D19-4437

November 24, 2021

Appeal from the Circuit Court for Polk County; J. Kevin Abdoney,
Judge.

Howard L. Dimmig, II, Public Defender, and Cynthia J. Dodge,
Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Katherine
Coombs Cline, Assistant Attorney General, Tampa, for Appellee.

BLACK, Judge.

Christopher Jones appeals from the order denying his motion
for postconviction relief filed pursuant to Florida Rule of Criminal

Procedure 3.850. Jones raised two grounds in his motion; ground one was denied following an evidentiary hearing and ground two was summarily denied. On appeal, Jones challenges only the denial of ground one—in which he asserted that trial counsel rendered ineffective assistance for failing to call exculpatory witnesses at trial—and only does so in part. Jones argues that the postconviction court erred in determining that trial counsel did not perform deficiently in failing to call Tom Thomas as a witness because Mr. Thomas's testimony that a business cannot be licensed as a contractor by the Department of Business and Professional Regulations concerned a legal question and would not have been admissible at trial. Although the State does not expressly concede error, it does not dispute Jones's contention. Because we conclude that the postconviction court erred in determining that Mr. Thomas's testimony would have been inadmissible at trial as concerning a legal question, we reverse in part.

Jones was convicted of several offenses following a trial. Pertinent to this appeal, Jones was convicted of four counts of contracting without a license in violation of section 489.127(1), Florida Statutes. During trial, Jones's contractor's license was

admitted into evidence, establishing that he had been licensed as a certified building contractor during all pertinent time periods.

However, the State's position was that Jones had been contracting in the name of his business and that his business had not been "licensed" by the department. The State's fraud investigator testified at trial that he had determined through his investigation that Jones's business did not have a license. According to Jones, this testimony was inaccurate and misleading and trial counsel rendered ineffective assistance for failing to call a witness to explain that only individuals—not businesses—are licensed as contractors by the department and that businesses are qualified through a licensed contractor to engage in contracting services.

Mr. Thomas, deputy general counsel for the department, testified at the evidentiary hearing on Jones's rule 3.850 motion. Of all the testimony elicited from Mr. Thomas, the postconviction court found that the only testimony that would have been "helpful" to Jones that had not been presented during the trial through some other means was Mr. Thomas's testimony that a business cannot be licensed by the department as a contractor. Rather, in order for a business to engage in contracting services, a licensed contractor

must receive approval from the department to "qualify" the business; the licensed contractor acts as the business's qualifying agent. The postconviction court determined that since testimony "as to what the law requires or does not require" is inadmissible, trial counsel could not be deemed deficient for failing to call Mr. Thomas as a witness to testify "concerning the legal question as to whether a business can be a licensed contractor." *See Owen v. State*, 986 So. 2d 534, 546 (Fla. 2008) ("Trial counsel cannot be deemed ineffective for failing to present inadmissible evidence." (citing *Pietri v. State*, 885 So. 2d 245, 254 (Fla. 2004))).

"On review of an order denying postconviction relief following an evidentiary hearing, we defer to the postconviction court's factual findings that are supported by competent substantial evidence but we review de novo the court's legal conclusions." *Campbell v. State*, 247 So. 3d 102, 106 (Fla. 2d DCA 2018) (citing *Light v. State*, 796 So. 2d 610, 615 (Fla. 2d DCA 2001)). Jones asserts that Mr. Thomas's testimony did not concern a legal question. We agree. Mr. Thomas merely explained that the department does not license businesses but only individuals and that businesses can be qualified through the license of a contractor.

He then explained that the licensed contractor must seek and receive approval from the department to qualify a business and that once approval is given, the licensed contractor can then operate in the name of the qualified business. In sum, Mr. Thomas testified that the department "license[s] individuals but individuals qualify businesses and businesses cannot operate unless they're qualified." Mr. Thomas, as a representative of the department, had the requisite knowledge to testify as to the department's procedures as well as to explain that the department does not license businesses as contractors. Mr. Thomas did not attempt to interpret section 489.127(1) or explain the meaning of its terms. As such, the cases relied upon by the postconviction court are inapposite. *Cf. Hann v. Balogh*, 920 So. 2d 1250, 1251 (Fla. 2d DCA 2006) ("This court has repeatedly held that 'opinion testimony as to the legal interpretation of Florida law is not a proper subject of expert testimony.' " (quoting *Brophy v. Condon*, 771 So. 2d 7, 8 (Fla. 2d DCA 2000))); *Lee County v. Barnett Banks, Inc.*, 711 So. 2d 34, 34 (Fla. 2d DCA 1997) (reversing attorney's fees award that was based on an expert's opinion testimony as to the legal interpretation of the pertinent statute because "[e]xpert testimony is not admissible concerning a

question of law"); *Edward J. Seibert, A.I.A., Architect & Planner, P.A. v. Bayport Beach & Tennis Club Ass'n*, 573 So. 2d 889, 891-92 (Fla. 2d DCA 1990) ("An expert should not be allowed to testify concerning questions of law, and the interpretation of the building code presented a question of law." (citations omitted)); *Devin v. City of Hollywood*, 351 So. 2d 1022, 1026 (Fla. 4th DCA 1976) ("[T]he trial court erred in relying upon expert testimony to determine the meaning of terms which were questions of law to be decided by the trial court." (citing *Consol. Mut. Ins. v. Ramy*, 238 So. 2d 431, 431 (Fla. 3d DCA 1970))).

We reverse the postconviction court's order to the extent that the court denied relief based on the determination that Mr. Thomas's testimony was inadmissible as concerning a legal question and remand for the postconviction court to reconsider under *Strickland*¹ whether trial counsel was ineffective for failing to call Mr. Thomas as a witness at trial. *Cf. Odegaard v. State*, 137 So. 3d 505, 508 (Fla. 2d DCA 2014) (reversing in part where the postconviction court erroneously determined that counsel's

¹ *Strickland v. Washington*, 466 U.S. 668 (1984).

performance was not deficient and remanding for consideration of whether counsel's deficient performance prejudiced appellant).

Affirmed in part; reversed in part; remanded.

KHOUZAM and SLEET, JJ., Concur.

Opinion subject to revision prior to official publication.