

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JOSEPH ALLEN MAYS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-801

October 15, 2021

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Pinellas County; Susan St. John, Judge.

Joseph Allen Mays, pro se.

Ashley Moody, Attorney General, Tallahassee, and Suzanne C. Bechard, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Joseph Allen Mays appeals the order summarily denying his motion filed under Florida Rule of Criminal Procedure 3.850. We affirm without comment the summary denial of all but one of Mr.

Mays' claims. We reverse and remand the portion of the order that summarily denies ground two.

In ground two, Mr. Mays asserted that trial counsel was ineffective for failing to investigate his competency and move for a competency hearing. He argued that at the time of his trial he was suffering from various mental illnesses, including bipolar disorder, multiple personality disorder, schizophrenia, and that he was suffering from delusions and hallucinations and hearing voices. He claimed counsel knew he had been under psychiatric care prior to trial, had attempted suicide multiple times, and was a depressive alcoholic. He further argued that counsel's failure to determine his competency prior to trial violated his due process right to not to be tried while incompetent and prejudiced him because he was unable to assist counsel at trial. Had a hearing been held, Mr. Mays claimed, he would have been declared incompetent.

Mr. Mays' allegations are facially sufficient and are not conclusively refuted by the record excerpts of interviews presented at trial attached to the order by the postconviction court. *See Houle v. State*, 74 So. 3d 143, 144 (Fla. 1st DCA 2011); *see also Perez v. State*, 306 So. 3d 126, 128, 129-30 (Fla. 2d DCA 2018).

Accordingly, we reverse the portion of the postconviction court's order summarily denying ground two and remand for the postconviction court to either attach the portions of the record that conclusively refute ground two or to hold an evidentiary hearing on the narrow claim that trial counsel was ineffective for failing to investigate Mr. Mays' competency and move for a competency determination.

Affirmed in part; reversed in part; remanded.

SILBERMAN, KELLY, and LUCAS JJ., Concur.

Opinion subject to revision prior to official publication.