

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JAY LARSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-2247

December 10, 2021

Appeal pursuant to Fla R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Michelle Sisco, Judge.

PER CURIAM.

Jay Larson appeals from the order dismissing his motion filed under Florida Rule of Criminal Procedure 3.850. We reverse the order only insofar as it dismissed the motion with prejudice.

Mr. Larson entered negotiated pleas to charges of robbery in three different cases. He then filed a motion under rule 3.850 challenging his pleas in all three cases. He subsequently filed a

motion to withdraw that rule 3.850 motion seeking to "reserv[e] his right" to again raise ground two in a postconviction motion "after consulting with private counsel." The postconviction court granted Mr. Larson's motion but dismissed his rule 3.850 motion with prejudice.

This court has held that "[a] typical postconviction motion should not be dismissed with prejudice when the defendant volunteers to dismiss it unless there is prejudice to the State or some justification for resolving the motion on the merits." *McCray v. State*, 104 So. 3d 1201, 1201 (Fla. 2d DCA 2012); *see also Hansen v. State*, 816 So. 2d 808, 809 (Fla. 1st DCA 2002) ("Where an appellant files a timely motion for voluntary dismissal of a rule 3.850 motion, and the state suffers no prejudice, . . . [s]uch a motion should be granted without prejudice to the appellant's right to file a subsequent motion."). Though the record reflects that the postconviction court put forth a substantial amount of work clarifying the procedural history of the cases for Mr. Larson and the potential consequences of withdrawing his negotiated pleas, it had not ruled on Mr. Larson's rule 3.850 motion and did not cite any prejudice to the State that could justify its decision to dismiss the

motion with prejudice. We therefore reverse the order only to the extent that the dismissal was with prejudice.¹

Reversed and remanded.

CASANUEVA, SMITH, and STARGEL JJ., Concur.

Opinion subject to revision prior to official publication.

¹ There is no indication in the postconviction record that Mr. Larson sought to again raise ground two in a timely filed rule 3.850 motion so that he could have been prejudiced by the postconviction court's ruling.