

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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ANTONIO JAMES JEFFERSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-1106

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December 2, 2022

Appeal pursuant to Fla. R. App. P. 9.140(b)(1)(D) from the Circuit Court for Highlands County; Peter F. Estrada, Judge.

Robert David Malove, Fort Lauderdale, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Linsey Sims-Bohnenstiehl, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Antonio James Jefferson appeals from the postconviction court's order denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We reverse

for the postconviction court to either attach records which refute amended ground eight and supplemental grounds nine and fifteen or hold an evidentiary hearing on those claims and affirm without comment the denial of the remaining grounds.

A jury found Mr. Jefferson guilty of one count each of armed kidnapping, armed burglary of a dwelling, and armed robbery. The trial court sentenced him to concurrent terms of life imprisonment on all counts.

On September 22, 2016, Mr. Jefferson filed his first motion for postconviction relief. On November 21, 2016, the postconviction court denied some of his claims, and on November 8, 2017, it denied the remainder of the claims after an evidentiary hearing.

On May 23, 2019, Mr. Jefferson filed a motion for leave to file an amended/supplemental motion, asserting that he had recently learned that his amended and supplemental claims were never addressed by the postconviction court. The new claims included an amended ground eight and new grounds nine through sixteen. The prison date stamp reflected that the amended motion was filed on September 27, 2016. *See Haag v. State*, 591 So. 2d 614, 617 (Fla. 1992) (holding that the mailbox rule, under which a document "filed

by a pro se inmate is deemed filed at the moment in time when the inmate loses control over the document by entrusting its further delivery or processing to agents of the state," such as by placing the document in the hands of prison officials, "exists as a matter of Florida law"). The postconviction court dismissed Mr. Jefferson's May 2019 motion under rule 3.850(h), finding that it was untimely and successive. We reversed and remanded, determining that the September 27, 2016, amended/supplemental motion had been timely filed. *See Jefferson v. State*, 292 So. 3d 560 (Fla. 2d DCA 2020). On March 4, 2021, the postconviction court issued an order granting Mr. Jefferson's motion for leave to file the amended/supplemental motion and denying the grounds contained in his amended/supplemental motion.

In his amended/supplemental motion, Mr. Jefferson raised an amended ground eight and new grounds nine through sixteen. All of the amended/supplemental claims were ineffective assistance of counsel claims. "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 allege 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, the 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.'" *Id.* (quoting *Strickland*, 466 U.S. at 694). When a defendant fails to establish one prong of the *Strickland* analysis, it is unnecessary to examine whether the other prong has been established. *See Hodges v. State*, 213 So. 3d 863, 870 (Fla. 2017).

### **Amended Ground Eight**

Mr. Jefferson alleged that counsel was ineffective for failing to convey a fourteen-year plea offer prior to its expiration. He claimed

he learned of the offer during a phone conversation with his brother. Upon confronting his counsel about what his brother had said about the fourteen-year offer, counsel informed him that the time for accepting the State's fourteen-year offer had expired. Counsel then informed Mr. Jefferson that the only alternative available to him at the time was to make the State a counteroffer. Mr. Jefferson asked counsel to convey an offer of seven years' imprisonment followed by seven years' probation. Counsel then asked Mr. Jefferson if he would accept the State's current twenty-year offer if the State declined to accept his counteroffer, and Mr. Jefferson said no. Mr. Jefferson then informed his counsel that if the State again offered concurrent terms of fourteen years' imprisonment for all charges, he would still accept it.

Mr. Jefferson argued that it is reasonable to infer that the prosecutor would not have withdrawn the offer because the offer was made with the knowledge that he had provided an inculpatory statement and one of his alleged codefendants had provided an inculpatory statement against him. He also argued that it can be inferred that the court would not have disapproved the plea agreement because there had not been intervening circumstances

since his arrest that would sway its decision otherwise and that a more culpable alleged codefendant entered a plea for ten years' imprisonment followed by ten years' probation.

To allege prejudice in claims of ineffective assistance from misadvice regarding a plea offer

the defendant must allege and prove a reasonable probability, defined as a probability sufficient to undermine confidence in the outcome, that (1) he or she would have accepted the offer had counsel advised the defendant correctly (2) the prosecutor would not have withdrawn the offer (3) the court would have accepted the offer and (4) the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

*Alcorn v. State*, 121 So. 3d 419, 430 (Fla. 2013). Additionally, "what remains implicit but unsaid in *Alcorn* is that the favorable plea offer must actually exist. A postconviction court cannot analyze such a claim under *Alcorn* without first finding that the State extended an offer." *Forbes v. State*, 269 So. 3d 677, 680 (Fla. 2d DCA 2019).

There is a disparity in the facts in Mr. Jefferson's original postconviction motion and his amended/supplemental motion. The original motion stated that Mr. Jefferson was aware of the fourteen-year offer, and the amended/supplemental motion stated that he became aware of the offer after its expiration. The postconviction

court did not hold an evidentiary hearing on this claim from the original motion, and the evidentiary hearing transcript cited only indicates that counsel testified that the "State had . . . made some plea offers very early on that they . . . held onto but they were for significant time." Therefore, the record does not refute this claim.

### **Supplemental Ground Nine**

Mr. Jefferson alleged that counsel was ineffective for failing to argue in his motion to suppress statements that he was questioned by law enforcement during a custodial interrogation without the benefit of the *Miranda*<sup>1</sup> warnings. Mr. Jefferson characterized his interrogation as custodial because he was summoned to the police department by Detective Smith, who told Mr. Jefferson his codefendants had given sworn testimony implicating him in the crime. Smith said he knew Mr. Jefferson previously lied and stated Mr. Jefferson would be arrested if he didn't come to the station and provide a sworn, truthful statement implicating himself in the crime. If Mr. Jefferson refused, Smith said a warrant would be

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

issued for his arrest. Mr. Jefferson argued Smith's outrageous behavior induced his false confession.

The postconviction court found Mr. Jefferson's statements and admissions were made in a non-custodial interview and, thus, *Miranda* warnings were not required. However, the motion to suppress did not address whether the interrogation was custodial—it only focused on whether Mr. Jefferson's statements were voluntary.

Mr. Jefferson argues that the denial order and the State's response both point to trial counsel's motion to suppress (which did not include an argument related to custody) and the denial of the motion to suppress (which found the issue of custody undisputed). Mr. Jefferson's claim is that trial counsel should have included an argument that the totality of the circumstances showed a custodial interrogation and the unwarned statements, which were the only evidence against him, should have been suppressed.

In order to establish a claim of ineffective assistance of counsel based on the failure to file a motion to suppress, a defendant must demonstrate that counsel knew a valid basis existed to suppress the relevant evidence, yet counsel failed to file the motion. *See*



*Harrison v. State*, 562 So. 2d 827, 827–28 (Fla. 2d DCA 1990). A motion to suppress statements is appropriate if law enforcement illegally obtained a confession or admission from the defendant. See Fla. R. Crim. P. 3.190(h). In order to establish prejudice, a defendant "must demonstrate that the motion to suppress would have been successful, that is, the evidence would have been excluded." *Kormondy v. State*, 983 So. 2d 418, 430 (Fla. 2007) ("[W]here defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious." (citing *Zakrzewski v. State*, 866 So. 2d 688, 694 (Fla. 2003))).

Mr. Jefferson raises compelling claims that he was in custody during his interrogation. He examines the *Ramirez*<sup>2</sup> factors and cites to *Wilson v. State*, 242 So. 3d 484 (Fla. 2d DCA 2018), which

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<sup>2</sup> *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999), sets forth the factors to determine whether an interrogation is custodial: "(1) the manner in which police summon the suspect for questioning; (2) the purpose, place, and manner of the interrogation; (3) the extent to which the suspect is confronted with evidence of his or her guilt; (4) whether the suspect is informed that he or she is free to leave the place of questioning."

has a similar fact pattern to Mr. Jefferson's allegations. The record does not refute the claim that counsel should have included the argument about custodial interrogation in the motion to suppress.

### **Supplemental Ground Fifteen**

Mr. Jefferson alleged that counsel was ineffective for failing to effectively cross-examine Detective Smith. Specifically, he claimed that

[D]uring counsel's cross examination of the state's key law enforcement witness detective Smith, he requested for his counsel to impeach detective Smith regarding the reason why he was no longer a detective with the HCSO in order to bring out on cross examination that Smith was removed from that position and eventually the HCSO due to Smith's improper and unlawful tactics that caused several people to provide involuntary statements to him. However, rather than to have cross examined Smith on this critical issue, counsel told Jefferson that he and Smith had a very close relationship and that he did not want to embarrass him.

Mr. Jefferson claimed that since Detective Smith's tactics were instrumental in obtaining his confession, which he maintains should have been suppressed, this impeachment evidence was critical to the defense.

The postconviction court found that trial counsel did attempt to show Mr. Jefferson's confession was false during cross-

examination and attached a transcript of the cross-examination, but it did not address Mr. Jefferson's specific claim that his trial counsel did not attempt to impeach Detective Smith with the fact that he was allegedly fired from Highlands County Sheriff's Office for obtaining confessions in an improper manner.

### **Conclusion**

The postconviction court did not attach portions of the record that conclusively refute Mr. Jefferson's claims in amended ground eight and supplemental grounds nine and fifteen. Therefore, we affirm the postconviction court's order in part, reverse in part, and remand for the postconviction court to either attach portions of the record that refute amended ground eight and supplemental grounds nine and fifteen of Mr. Jefferson's amended/supplemental postconviction motion or hold an evidentiary hearing on those claims.

Affirmed in part, reversed in part, and remanded.

CASANUEVA, KELLY, and LaROSE, JJ., Concur.

Opinion subject to revision prior to official publication.