

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

WILLIE WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-3795

July 15, 2022

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

Willie Williams, pro se.

CASANUEVA, Judge.

Willie Williams appeals an order summarily denying his request for postconviction relief that was filed pursuant to Florida Rule of Criminal Procedure 3.850(b)(1). In 2007, Mr. Williams was convicted of aggravated battery causing great bodily harm with a

weapon and battery. He was sentenced to thirty years in prison as a prison releasee reoffender for the felony and to time served for the misdemeanor. His judgments and sentences were affirmed in *Williams v. State*, 37 So. 3d 865 (Fla. 2d DCA 2010). Because the circuit court erred in summarily denying Mr. Williams' request for postconviction relief, we reverse and remand for the circuit court to conduct an evidentiary hearing.

I. Postconviction Proceeding

Mr. Williams sought postconviction relief based on a claim of newly discovered evidence, and he attached the affidavit of Jackson Alexander to a supplemental motion. In the affidavit, Mr. Alexander stated that he witnessed the fight that led to Mr. Williams' charges. He testified that Mr. Williams was in the backseat of a car that pulled up to the two victims who were standing in a parking lot. The driver got out of the car and struck one of the victims, and the front seat passenger hit the second victim in the head with something. Mr. Alexander further stated that Mr. Williams did not participate in the assault.

After ordering the State to respond to Mr. Williams' motion, the circuit court summarily denied the claim after finding that Mr.

Alexander's testimony would not produce an acquittal upon retrial based on the overwhelming evidence presented at trial.

II. Postconviction Claims Involving Newly Discovered Evidence

We review the circuit court's summary denial of Mr. Williams' postconviction motion using the de novo standard of review. *See Baker v. State*, 310 So. 3d 1012, 1014 (Fla. 2d DCA 2020) (quoting *Duncan v. State*, 232 So. 3d 450, 452 (Fla. 2d DCA 2017)). To prevail on a claim of newly discovered evidence, a defendant must meet the following two requirements:

First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial.

Tompkins v. State, 994 So. 2d 1072, 1086 (Fla. 2008) (citing *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)).

"Newly discovered evidence satisfies the second prong . . . if it 'weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.' " *DeJesus v. State*, 302 So. 3d 472, 475 (Fla. 2d DCA 2020) (bracket alteration in original) (quoting *Marek v. State*, 14 So. 3d 985, 990 (Fla. 2009)). When

determining whether a summary denial of a newly discovered evidence claim was proper, an appellate court must accept the allegations in the affidavit as true. *McLin v. State*, 827 So. 2d 948, 956 (Fla. 2002).

III. Discussion

In the present case, Mr. Alexander's affidavit supports Mr. Williams' defense and his trial testimony. Mr. Williams testified at trial that the driver hit one of the victims, and the front seat passenger hit the second victim.

This case is similar to *Coley v. State*, 74 So. 3d 184, 184 (Fla. 2d DCA 2011), where the appellant submitted the sworn affidavit of a witness who would testify that another man shot the victim. This court noted that at the appellant's trial, three State witnesses identified the appellant as the shooter. *Id.* at 185. However, this court concluded that the newly discovered witness's testimony would have supported the appellant's assertion at trial that the three witnesses identified the wrong person and that there was nothing in the attached portions of the record that would decisively refute the appellant's claim that he was present but hiding at the time of the shooting. *Id.* This court further concluded that while

the new witness's "credibility may be called into question based on conflict with testimony adduced at trial, such conflict is necessarily an evidentiary matter that must be weighed after a hearing and is not proper grounds for denial at the summary stage of the proceeding." *Id.*; *see also Himes v. State*, 310 So. 3d 542, 544 (Fla. 1st DCA 2021) ("Affidavits produced nearly fifteen years after a criminal event are inherently suspect, but not automatically grounds for summary denial."); *Simpson v. State*, 100 So. 3d 1258, 1260 (Fla. 4th DCA 2012) ("We would agree that this affidavit produced by a fellow prisoner nearly fifteen years after the event is inherently suspect, but this does not support summary denial in this case.").

Here, the circuit court improperly weighed the evidentiary conflicts between Mr. Alexander's affidavit and the trial testimony without the benefit of an evidentiary hearing. *See Johnson v. State*, 313 So. 3d 894, 897 (Fla. 2d DCA 2021) (citing *DeJesus*, 302 So. 3d at 475). As this court stated in *Coley*, the conflicting testimony is an evidentiary matter that has to be weighed after a hearing. 74 So. 3d at 185. We therefore reverse that part of the circuit court's order that summarily denied this claim and remand the case for the

circuit court to conduct an evidentiary hearing. Although the evidence as alleged in the affidavit might not be sufficient to warrant a new trial, the circuit court's obligation at this stage is to hold an evidentiary hearing.¹

Reversed and remanded for further proceedings.

VILLANTI and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.

¹ We note Mr. Williams' related case, *Williams v. State*, 2D21-1619, 2022 WL 2374522, at *3 (Fla. 2d DCA July 1, 2022), in which this court reversed an order denying Mr. Williams' supplemental motion to correct illegal sentence and remanded the case for resentencing.