

DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

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JOSE PULIDO BAEZA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-114

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November 16, 2022

Appeal from the Circuit Court for Pasco County; Kemba Johnson  
Lewis, Judge.

Jose Pulido Baeza, pro se.

SLEET, Judge.

Pulido Baeza, pro se, challenges the summary denial of his  
Florida Rule of Criminal Procedure 3.850 motion for postconviction  
relief. Because Pulido Baeza may be able to state a facially  
sufficient claim in ground three if given an opportunity to amend

his motion to assert the requisite prejudice, we reverse the order as to claim three and direct the postconviction court to strike it with leave to amend within a reasonable time. We affirm the order in all other respects.

In 2019, a jury found Pulido Baeza guilty of two counts of trafficking in methamphetamine. The evidence introduced at trial reflected that the events leading up to Pulido Baeza's arrest began when his brother Arnulfo was arrested for delivering seven kilograms of methamphetamine to another man at a truck stop. Arnulfo then became a confidential informant, informing law enforcement about the presence of methamphetamine in various locations, including in an apartment next to Pulido Baeza's apartment in Dade City and inside a truck parked in Zephyrhills. Arnulfo had a conversation with Pulido Baeza about the amount of information the police knew, and following that conversation, Pulido Baeza agreed to cooperate and meet with law enforcement.

On June 4, 2014, a Pasco County Sheriff's detective met with Pulido Baeza. During this meeting, Pulido Baeza admitted to storing seven kilograms of methamphetamine in his next-door neighbor's apartment in Dade City. Pulido Baeza told the detective

that his neighbor, whom he had described as mentally handicapped, had no idea that Pulido Baeza had stored drugs in his apartment. Following that conversation, the detective and Pulido Baeza went to the neighbor's apartment. When they arrived, the detective observed Pulido Baeza use a set of keys to enter the apartment. Pulido Baeza entered the apartment and about a minute later walked out holding a blue cooler and a chicken feedbag, which he handed to the detective. The detective then took the cooler and chicken feedbag to another location, where the contents inside each item were photographed and examined. Inside the blue cooler and chicken feedbag were a total of fourteen large Ziploc bags, and a lab analyst from the Florida Department of Law Enforcement testified that one of those Ziploc bags contained 528.37 grams of methamphetamine.

Later that day, Pulido Baeza also admitted that he had parked his truck at his friend's house in Zephyrhills. Pulido Baeza told the detective that methamphetamine was stored inside a hidden compartment located underneath the back seat of the truck. Pulido Baeza gave the detective detailed instructions on how to access the compartment. He explained that the key to the truck was inside his

friend's house and that his friend was out of town at the time. He then signed a waiver to have the truck impounded. After the truck was impounded, the detective opened the hidden compartment after following Pulido Baeza's detailed instructions and found eighteen Ziploc bags containing methamphetamine, and each bag weighed between 463.5 to 594.4 grams.

Pulido Baeza was sentenced to two concurrent fifteen-year prison terms. He filed a direct appeal, and this court affirmed the judgment and sentences. *Baeza v. State*, 321 So. 3d 206 (Fla. 2d DCA 2020) (table decision). Pulido Baeza subsequently filed his pro se rule 3.850 motion for postconviction relief in which he argued in claim three that his trial counsel was ineffective for failing to present an entrapment defense. The postconviction court summarily denied his motion and attached a copy of his judgment and sentence and portions of the trial transcript to the written order.

We review de novo the postconviction court's summary denial of a claim of ineffective assistance. *Martin v. State*, 205 So. 3d 811, 812 (Fla. 2d DCA 2016). In conducting the review, "an appellate court must accept the defendant's factual allegations as true to the

extent that such allegations are not refuted by the record." *Nixon v. State*, 932 So. 2d 1009, 1018 (Fla. 2006). "To uphold the trial court's summary denial of claims raised in a [rule] 3.850 motion, the claims must be either facially invalid or conclusively refuted by the record." *Willacy v. State*, 967 So. 2d 131, 138 (Fla. 2007) (quoting *Finney v. State*, 831 So. 2d 651, 656 (Fla. 2002)).

The postconviction court concluded that Pulido Baeza's claim that trial counsel was ineffective for failing to present an entrapment defense was conclusively refuted by the record. We disagree.

The postconviction court determined that when trial counsel suggested to the jury during closing arguments that Pulido Baeza's brother entrapped him by telling him to store something in the apartment and then told police the drugs belonged to Pulido Baeza, trial counsel effectively argued an entrapment defense in his closing statement. However, upon reviewing the attached portion of the record, we conclude that it does not support the postconviction court's conclusion. In fact, counsel's closing argument seems to suggest the opposite. Admittedly, trial counsel did argue that Pulido Baeza's brother, a confidential informant, went to the police

and told them that he had drugs hidden in an apartment and that he and another guy, Mario, stole the drugs and were planning to start a drug distribution ring. However, trial counsel emphasized that the jury has no evidence as to what, if anything, Pulido Baeza's brother told him because "[t]here's no wire; there's no presence of police there to tell us what he said."

Accordingly, the attached portion of the record does not support the postconviction court's conclusion that trial counsel argued an entrapment defense and that the record therefore conclusively refutes Pulido Baeza's claim.

Furthermore, we conclude that Pulido Baeza's claim was facially insufficient. To plead a facially sufficient claim of ineffective assistance of counsel based on counsel's failure to present an entrapment defense, Pulido Baeza must plead facts establishing that his trial counsel's performance was deficient and that he was prejudiced thereby. *See Martin*, 205 So. 3d at 812 (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). To establish the subjective entrapment defense, "a defendant must show, by a preponderance of the evidence, that a government agent induced him or her to commit the offense and that he or she was not

predisposed to do so. The burden then shifts to the State to rebut this with evidence beyond a reasonable doubt." *Cabrera v. State*, 766 So. 2d 1131, 1133 (Fla. 2d DCA 2000) (citing *Munoz v. State*, 629 So. 2d 90, 99 (Fla. 1993)).

In his motion, Pulido Baeza stated in a conclusory manner that his counsel's deficient performance prejudiced him. However, he failed to plead sufficient facts that would establish that a government agent induced him to commit the offense and that he was not predisposed to do so. In his motion, Pulido Baeza made a conclusory allegation that his brother, acting as a confidential informant, induced him to commit the offense. He provides no additional facts to support this allegation. Furthermore, he does not in any way address the second element that he was not already predisposed to commit the offense. Accordingly, this claim was facially insufficient.

Because his claim was insufficiently pled, Pulido Baeza is entitled to an opportunity to amend his motion to assert the requisite prejudice, if he can. See Fla. R. Crim. P. 3.850(f)(2) ("If the motion is insufficient on its face, and the motion is timely filed under this rule, the court shall enter a nonfinal, nonappealable

order allowing the defendant 60 days to amend the motion."); *Spera v. State*, 971 So. 2d 754, 761 (Fla. 2007) ("[W]hen a defendant's initial rule 3.850 motion for postconviction relief is determined to be legally insufficient for failure to meet either the rule's or other pleading requirements, the trial court abuses its discretion when it fails to allow the defendant at least one opportunity to amend the motion.").

Accordingly, we reverse the order to the extent that it summarily denied relief on ground three, and we remand for the postconviction court to allow Pulido Baeza to amend his motion to include sufficient facts and allegations to support this claim. The postconviction court may again summarily deny ground three if Pulido Baeza fails to allege the requisite prejudice or the postconviction court attaches those portions of the record that conclusively refute the claim. Otherwise, it must hold an evidentiary hearing. *See* Fla. R. Crim. P. 3.850(f). We affirm in all other respects.

Affirmed in part, reversed in part, and remanded.

ATKINSON and LABRIT, JJ., Concur.



Opinion subject to revision prior to official publication.