

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

EDWIN ROMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-766

October 28, 2022

Appeal from the Circuit Court for Polk County; Lori A. Winstead,
Judge.

Edwin Roman, pro se.

PER CURIAM.

Edwin Roman appeals the summary denial of his timely motion for postconviction relief. In his motion, Mr. Roman made two claims of ineffective assistance of counsel. In the first claim, Mr. Roman alleged that trial counsel was unprepared for cross-examination. In the second claim, Mr. Roman alleged that he

accepted trial counsel's advice to reject a plea offer without trial counsel informing him that he faced life in prison on two separate counts. The postconviction court summarily denied both claims.

We affirm the summary denial of Mr. Roman's first claim without further comment. As to Mr. Roman's second claim, the postconviction court ruled that the record conclusively demonstrated that Mr. Roman "understood the charges he faced and the range of potential penalties." In support of this conclusion, the postconviction court referred to two reports prepared by experts who had examined Mr. Roman to determine his competency to stand trial. One expert opined that "Mr. Roman understood that he could possibly be imprisoned for life if found guilty of his offenses." The other expert opined that Mr. Roman "stated that he could go to prison for at least [five] years with these charges. Thus, he has a concrete understanding of the conditions and restrictions which could be imposed if found guilty and a general idea of a longer term duration."

At best, these reports demonstrate that Mr. Roman understood that he faced life in prison; however, neither expert's report conclusively refuted Mr. Roman's allegations that trial

counsel failed to advise him that he faced life sentences on two separate counts and that, had he known this, he would not have rejected the State's plea offer. Mr. Roman pleaded a facially sufficient ground for postconviction relief. *See, e.g., Kleppinger v. State*, 884 So. 2d 146, 148 (Fla. 2d DCA 2004) (concluding that allegation that counsel "fail[ed] to advise [defendant] of possible sentences he faced if he proceeded to trial" and that "he would have accepted the State's plea offer if he had been properly advised . . . state[d] a prima facie claim of ineffective assistance of counsel"). Accordingly, the postconviction court should have attached records to its order which conclusively refuted Mr. Roman's allegation, *see* Fla. R. Crim. P. 3.850(f)(5), or set the matter for an evidentiary hearing, *see Plyant v. State*, 134 So. 3d 533, 534 (Fla. 5th DCA 2014) ("Affirmative misadvice by counsel as to . . . the actual sentence length is a cognizable basis for postconviction relief, and an evidentiary hearing must be held unless the record conclusively refutes the claim.").

On remand, if the postconviction court again concludes that Mr. Roman's second claim is conclusively refuted by the record, it must attach portions of the record that support such a conclusion.

Otherwise, the postconviction court should set the matter for an evidentiary hearing.

Affirmed in part; reversed in part; remanded with instructions.

VILLANTI, SLEET, and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.