

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CALEB ANDREW FERNANDEZ,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D22-1039

November 30, 2022

Appeal pursuant to Fla. R. App. P. 9.141(b)(3) from the Circuit Court for Collier County; Ramiro Manalich, Judge.

Howard L. Dimmig, II, Public Defender, and Dane K. Chase, Special Assistant Public Defender, Bartow, for Appellant.

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

SILBERMAN, Judge.

Caleb Andrew Fernandez appeals an order denying his motion and amended motion for postconviction relief filed under Florida

Rule of Criminal Procedure 3.850. In his motions, Fernandez raised three claims of ineffective assistance of trial counsel. We affirm the order on appeal to the extent that it denies claim two. We reverse the order on appeal to the extent that it summarily denies claims one and three and remand for specific consideration of those claims.

As to Fernandez's initial motion, the postconviction court ordered the State to respond. The State did so, arguing that claims one and two were facially insufficient and should be stricken with leave to amend and that claim three should be denied because the arguments therein were conclusively refuted by the record and speculative. The postconviction court then entered an order striking claims one and two as facially insufficient with leave to amend. The order did not address claim three.

Fernandez filed an amended motion, amending claims one and two, and the postconviction court directed the State to respond. The State's response argued that the court should deny claim one and set claim two for an evidentiary hearing. The postconviction court entered an order directing an evidentiary hearing on claim two. As to claim one, the order states that "the Court will make a

ruling in the final Order resolving this matter." The order makes no reference to claim three.

Following an evidentiary hearing, the postconviction court entered the order on appeal denying claim two and setting forth its rationale. The court also denied claims one and three "for the reasons set forth in the previous order." However, the postconviction court never stated its rationale for denying claims one and three in any of its orders.

The State correctly concedes that the postconviction court erred by summarily denying claims one and three without explanation, requiring this court to reverse the summary denial of those claims and to remand for further proceedings. *See Roberts v. State*, 113 So. 3d 868, 869 (Fla. 2d DCA 2012). However, Fernandez has not argued or demonstrated that the postconviction court erred in denying claim two, thereby waiving review of the denial of claim two. *See Bilotti v. State*, 27 So. 3d 798, 800 (Fla. 2d DCA 2010); *see also Cati v. State*, 190 So. 3d 1157, 1158 (Fla. 2d DCA 2016) (citing *Bilotti* for the foregoing proposition).

Accordingly, we affirm the order on appeal to the extent that it denies claim two. We reverse the order on appeal to the extent that

it summarily denies claims one and three and remand for specific consideration of those claims. If the postconviction court again summarily denies the claims, it shall explain the rationale for its denial or attach those portions of the record that conclusively refute the claims.

Affirmed in part, reversed in part, and remanded.

SLEET and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.