

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

VERMONT SMITH,)	
)	
Appellant,)	
)	
v.)	Case No. 2D02-1203
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed July 18, 2003.

Appeal from the Circuit Court for Hendry
County; G. Keith Cary, Judge.

James Marion Moorman, Public Defender,
and Paul C. Helm, Assistant Public
Defender, Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Erica M. Raffel, Assistant
Attorney General, Tampa, for Appellee.

SALCINES, Judge.

Vermont Smith asserts that the trial court erred when it failed to appoint
conflict-free counsel to represent him and summarily denied his motion to withdraw plea
filed pursuant to Florida Rule of Criminal Procedure 3.170(*l*). We agree and reverse.

An indigent defendant has the right to court-appointed counsel to assist in filing a rule 3.170(l) motion. Padgett v. State, 743 So. 2d 70, 73 (Fla. 4th DCA 1999); see also Lester v. State, 820 So. 2d 1078, 1078 (Fla. 1st DCA 2002) (holding "once a defendant indicates his desire to avail himself of the rule 3.170(l) procedure, the trial court must appoint conflict-free counsel to advise and assist the defendant in this regard").

In the present case, the trial court addressed the merits of Smith's pro se motion and summarily denied relief. On appeal the State urges this court to hold that it was harmless error for the trial court to have denied Smith's motion because the plea colloquy demonstrates that Smith understood the consequences of his plea. This argument is not persuasive because the issue on appeal is not whether the motion was meritorious but whether Smith was denied conflict-free counsel at a critical stage of the proceedings. See Williams v. State, 793 So. 2d 1112 (Fla. 4th DCA 2001) (holding rule 3.170(l) proceeding is a critical stage in proceedings at which defendant is entitled to counsel). The denial of the right to counsel is not subject to a harmless error analysis. Padgett, 743 So. 2d at 74. Accordingly, we reverse the order denying the motion and direct the trial court to appoint conflict-free counsel to advise and assist Smith with his rule 3.170(l) motion.

Reversed and remanded with directions.

FULMER and VILLANTI, JJ., Concur.