

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

June 25, 2003

DELMAR HAMPTON, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D02-1463

BY ORDER OF THE COURT:

On its own motion, the court recalls the mandate issued March 31, 2003, withdraws the opinion issued March 12, 2003, reported at 838 So. 2d 1248 (Fla. 2d DCA 2003), and substitutes the attached opinion therefor.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

c: Siobhan Helene Shea, APD-Bartow  
Helene S. Parnes, AAG-Tampa  
Delmar Hampton  
Karleen F. DeBlaker, Clerk, Pinellas County

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

DELMAR HAMPTON, )  
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 Appellant, )  
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 v. ) Case No. 2D02-1463  
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 STATE OF FLORIDA, )  
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 Appellee. )  
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Opinion filed June 25, 2003.

Appeal from the Circuit Court for Pinellas  
County; Philip J. Federico, Judge.

James Marion Moorman, Public Defender,  
Bartow, and Siobhan Helene Shea, Special  
Assistant Public Defender, Bartow, for  
Appellant.

Charles J. Crist, Jr., Attorney General,  
Tallahassee, and Helene S. Parnes, Assistant  
Attorney General, Tampa, for Appellee.

THREADGILL, EDWARD F., Senior Judge.

Delmar Hampton challenges the trial court’s denial of his motion to  
withdraw his no contest plea. Hampton was originally charged with sexual battery,  
possession of marijuana, and possession of paraphernalia. He was permitted to plead

no contest to lesser included offenses and was sentenced to a total of eight years' probation. We reverse and remand for further proceedings.

Hampton filed his motion to withdraw plea after sentencing pursuant to Florida Rule of Criminal Procedure 3.170(l), which allows a defendant who has pleaded guilty or nolo contendere to appeal an involuntary plea if preserved by a motion to withdraw plea. Although Hampton raises two issues on appeal, one is dispositive. Hampton argues that the trial court's refusal to appoint counsel to assist him in preparation of his motion to withdraw plea denied him his Sixth Amendment right to counsel. We agree. A motion to withdraw plea is a critical stage of a criminal proceeding at which an indigent defendant is entitled to court-appointed counsel. Padgett v. State, 743 So. 2d 70 (Fla. 4th DCA 1999).

The court denied Hampton's motion without providing him assistance of counsel or an evidentiary hearing. This was per se reversible error. See Chapman v. California, 386 U.S. 18 (1967).

Citing Cunningham v. State, 677 So. 2d 929 (Fla. 4th DCA 1996), the State argues that Hampton was not entitled to counsel because Hampton merely had a conflict with his counsel. However, as the court observes in Padgett, 743 So. 2d at 73-74, Cunningham is factually distinguishable. In Cunningham, there was no factual dispute regarding counsel's allegedly coercive behavior that occurred in private and off the record. By contrast, Hampton alleged in his pro se motion to withdraw plea that his trial counsel had "lied to" and "deceived" him, inducing him to enter the plea. This type of conflict requires the appointment of counsel. See Padgett, 743 So. 2d at 73-74.

We affirm the judgment and sentence and reverse the trial court's denial of Hampton's motion to withdraw his plea. On remand the trial court shall conduct an evidentiary hearing on the motion and provide Hampton with conflict-free counsel.

Affirmed in part, reversed in part, and remanded.

FULMER and CASANUEVA, JJ., Concur.