

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

CHARLES GAMBLE, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D04-4527

Opinion filed May 11, 2005.

Appeal pursuant to Fla. R. App. P.  
9.141(b)(2) from the Circuit Court for  
Lee County; James R. Thompson,  
Judge.

KELLY, Judge.

Charles Gamble appeals the dismissal of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. In his motion, Mr. Gamble raises four claims of ineffective assistance of counsel. The trial court dismissed the motion stating that the "Defendant's motion is facially insufficient because it fails to set forth any allegation of prejudice as required in Strickland." The trial court's assessment of the motion is correct. However, the trial court failed to consider the

sworn memorandum of law Mr. Gamble filed with his motion. That memorandum details the facts that Mr. Gamble contends demonstrate prejudice, adds new claims, and expands on those contained in the motion. Because the memorandum is properly sworn, the trial court should have considered it in evaluating the sufficiency of Mr. Gamble's claims. Cf. Beck v. State, 801 So. 2d 964 (Fla. 2d DCA 2001) (holding that the trial court may only consider postconviction motions and supporting memoranda if properly sworn); Courson v. State, 652 So. 2d 512 (Fla. 5th DCA 1995) (holding that the trial court correctly ignored an unsworn memorandum but erred in disregarding sworn allegations in an affidavit attached to the memorandum). Accordingly, we reverse and remand for the trial court to reconsider Mr. Gamble's motion taking into account his sworn memorandum of law as well as his motion.

Reversed and remanded.

CASANUEVA and CANADY, JJ., Concur.