

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

THEODORE TURNER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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Case No. 2D05-2346

Opinion filed February 22, 2006.

Appeal from the Circuit
Court for Lee County;
Thomas S. Reese, Judge.

James Marion Moorman, Public
Defender, and John C. Fisher,
Assistant Public Defender, Bartow,
for Appellant.

Charles J. Crist, Jr., Attorney
General, Tallahassee, and
Danilo Cruz-Carino, Assistant
Attorney General, Tampa, for
Appellee.

WHATLEY, Judge.

Theodore Turner appeals the order denying his motion for postconviction relief. He raises several issues, but we find merit in only one.

The trial court summarily denied claim two of Turner's motion on the ground that it was procedurally barred because it had been raised on direct appeal.

The trial court misinterpreted Turner's claim. On direct appeal Turner raised the issue of whether the trial court erred in finding that he had willfully and substantially violated probation. In his postconviction motion he alleged that trial counsel was ineffective for failing to argue that the evidence was insufficient to support a violation of condition nine of his probation. These are different allegations, see Corzo v. State, 806 So. 2d 642 (Fla. 2d DCA 2002), and the latter allegation was not procedurally barred.

Accordingly, we affirm the order on Turner's postconviction motion except with regard to claim two. We reverse and remand to allow the trial court to either attach portions of the record refuting claim two or hold an evidentiary hearing.

Affirmed in part, reversed in part, and remanded.

FULMER, C.J., and LaROSE, J., Concur.