

Third District Court of Appeal

State of Florida

Opinion filed March 14, 2018.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-2131
Lower Tribunal Nos. 15-23475, 11-13903, 11-13905, 11-14194,
11-14195, 11-14197, 11-15697, 11-17051, 11-17050, 11-18356

Enrique Dobarganes,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Jose L. Fernandez, Judge.

Ratzan and Faccidomo, LLC, and Jude Faccidomo, for appellant.

Pamela Jo Bondi, Attorney General, and Christina L. Dominguez, Assistant Attorney General, for appellee.

Before SALTER, EMAS and LOGUE, JJ.

PER CURIAM.

Enrique Dobarganes appeals the summary denial of his post-conviction claims of ineffective assistance of counsel, raised in a motion under Florida Rule of Criminal Procedure 3.850. We reverse and remand for an evidentiary hearing on Dobarganes's claims.

The trial court denied the motion without an evidentiary hearing, ruling that Dobarganes's allegations were conclusively rebutted by his sworn statements during the plea colloquy. While a defendant is, of course, "bound by the statements he makes under oath during a plea colloquy," Rodriguez v. State, 223 So. 3d 1095, 1097 (Fla. 3d DCA 2017), we conclude that the record in the instant case fails to conclusively refute the factual claims by Dobarganes and the additional affiant. See, e.g., State v. Leroux, 689 So. 2d 235 (Fla. 1996); Garcia v. State, 907 So. 2d 607 (Fla. 3d DCA 2005); Fisher v. State, 824 So. 2d 1050 (Fla. 3d DCA 2002); Rensoli v. State, 718 So. 2d 1278 (Fla. 3d DCA 1998); Moore v. State, 991 So. 2d 977, 978 (Fla. 1st DCA 2008); Jones v. State, 846 So. 2d 1224 (Fla. 2d DCA 2003).

We express no opinion regarding the merits of Dobarganes's claims or entitlement to relief.

Reversed and remanded for further proceedings consistent with this opinion.