Third District Court of Appeal

State of Florida

Opinion filed June 26, 2019.
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-678
Lower Tribunal No. 11-10772
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Earvin Smith,
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, Veronica A. Diaz, Judge.

Earvin Smith, in proper person.

Ashley Moody, Attorney General, for appellee.

Before SALTER, MILLER and GORDO, JJ.

PER CURIAM.

Earvin Smith appeals the summary denial of his post-conviction motion under Florida Rule of Criminal Procedure 3.850. Smith's conviction and sentence for armed burglary were reinstated pursuant to the Florida Supreme Court's decision in State v. Smith, 241 So. 3d 53 (Fla. 2018). Smith previously and successfully argued in this Court that his prosecution for the crime was barred by the four-year statute of limitations, an issue he had not raised in the trial court. See Smith v. State, 211 So. 3d 176 (Fla. 3d DCA 2016).

In its opinion determining that the statute of limitations defense must be raised in the trial court to preserve the issue on appeal, the Florida Supreme Court specified that its holding "does not preclude a defendant prejudiced by trial counsel's nonstrategic failure to raise a statute-of-limitations defense from asserting a claim of ineffective assistance of counsel." State v. Smith, 241 So. 3d at 56.

Although Smith's current motion is inartfully drawn, he attributes his defense counsel's failure to raise the statute of limitations as a bar to prosecution for armed burglary to "ignorance of the law." Applying the principle of liberal construction to Smith's pro se motion, we treat it as a motion seeking relief based on the ineffective assistance of his trial counsel.

Because the order summarily denying Smith's motion and the record below do not conclusively refute Smith's claim, we reverse the order below and remand the case for an evidentiary hearing. See Fla. R. App. P. 9.141(b)(2)(D).