

Third District Court of Appeal

State of Florida

Opinion filed October 23, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1557
Lower Tribunal No. 87-35599A

Luis Delgado,
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, Stacy D. Glick, Judge.

Luis Delgado, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and FERNANDEZ and MILLER, JJ.

EMAS, C.J.

INTRODUCTION

Luis Delgado appeals from the trial court's order summarily denying his successive motion for postconviction relief filed in May 2019, pursuant to Florida Rule of Criminal Procedure 3.850. In that motion, Delgado asserted that, unbeknownst to him, the prosecutor had conveyed a twenty-five-year plea offer to Delgado's counsel immediately before trial in 1988. Delgado further asserts that: 1) his attorney never communicated this twenty-five-year plea offer to him; 2) Delgado did not become aware of this twenty-five-year plea offer until October 2018; and 3) had Delgado's attorney timely communicated this twenty-five-year plea offer, Delgado would have accepted that plea offer instead of going to trial (where Delgado was convicted and later sentenced to life in prison). We hold that Delgado's claim is procedurally barred, as will be discussed below.

More to the point, Delgado's claim of newly-discovered evidence is wholly undermined by one of Delgado's own previous pro se pleadings. As will be seen, Delgado's prior pleading compels affirmance of the trial court's order, and, in addition, appears to warrant the imposition of sanctions for the filing of a sworn pleading containing false and fraudulent allegations.

BACKGROUND AND FACTS

In his May 2019 pro se motion for postconviction relief, Delgado averred the following under oath:

1. Prior to commencement of the 1988 trial, the trial court extended a 15-year plea offer, but that offer was conditioned on all three defendants (Delgado and his two co-defendants) each accepting a plea offer.
2. Because one of Delgado's co-defendants rejected the plea offer, Delgado was unable to accept the 15-year plea offer.
3. Although Delgado was unaware at the time, the State had made a plea offer of twenty-five years (not conditioned on co-defendants accepting a plea offer) and communicated this 25-year plea offer to Delgado's trial counsel.
4. However, Delgado's trial counsel failed to convey the 25-year year plea offer to Delgado.
5. Delgado did not discover the existence of this 25-year plea offer until October 2018, during a conversation Delgado had with his former mother-in-law.
6. Attached to the motion was an affidavit purportedly executed by Delgado's former mother-in-law, Eugenia Lopez. That affidavit described a 1993 conversation between Ms. Lopez and Delgado's trial counsel, in which Delgado's trial counsel allegedly lamented that "his only regret was that he had not told Mr. Delgado about a plea offer by the prosecutor for 25 years in prison"

7. Had Delgado's counsel conveyed this 25-year plea offer at the time it was extended by the State, Delgado would have accepted the plea instead of going to trial.
8. Instead, Delgado went to trial, was convicted and received a sentence of life in prison.

However, these assertions, made by Delgado in May 2019, are directly contradicted by Delgado's sworn assertions in his July 2013 pro se motion for postconviction relief, wherein Delgado accused the trial judge of vindictive sentencing.¹ In that 2013 motion, Delgado described a plea colloquy between the defendants and the trial court which allegedly² took place immediately before trial in 1988:

The Court: Has any plea offer been made?

The State: Yes, [your] Honor, but all three defendants refused the plea.

The Court: What was the plea?

The State: As to Luis Delgado, the plea was twenty five years, as to Angel Medina it was thirty years and as to Wilfredo Delgado it was forty years.

¹ This motion was denied by the trial court and later affirmed by this Court in Delgado v. State, 134 So. 3d 464 (Fla. 3d DCA 2014).

² Delgado asserts that this 1988 plea colloquy was not recorded or transcribed, but he was apparently able to "recreate" it in his 2013 motion.

The Court: All right, this is what I am offering, as to Luis Delgado, fifteen years, as to Angel Medina seventeen years and as to Wilfredo Delgado twenty-two years.

The State: Your honor, the State does not agree with that offer.

The Court: That's fine, but this is my courtroom and that's my offer. I suggest that all three defendants go in the jury room with your lawyers and discuss the offer that I have made.

...

The Court: All three must plea guilty or no plea.

(Emphasis added.)

DISCUSSION

Although Delgado now contends that he was unaware of the State's 25-year plea offer, it is clear from the content of his own prior, pro se motion for postconviction relief, that by July 2013, at the very latest³, Delgado knew that the State had extended him a pretrial plea offer of twenty-five years. In light of this, Delgado was required to file his current motion no later than July 2015 (i.e., within two years of the "discovery" of this evidence). See Fla. R. Crim. P. 3.850(b)(1); Paz v. State, 274 So. 3d 452 (Fla. 3d DCA 2019). For this reason alone, Delgado's May 2019 motion for postconviction relief was untimely and procedurally barred. We therefore affirm the trial court's order summarily denying the motion.

³ Though it is unnecessary to our decision, it seems quite likely that Delgado was aware of this plea offer when it was contemporaneously announced in open court in 1988, immediately before trial.

ORDER TO SHOW CAUSE

More importantly, and considerably more disconcerting, is what appears to be the demonstrably false and fraudulent nature of Delgado's allegations. While the court makes no determination at this point, it certainly appears that Delgado has knowingly asserted a false claim of newly-discovered evidence. If true, such a brazen attempt to avoid a procedural bar by crafting false allegations can only be viewed as a contemptuous obstruction of the proper administration of justice and must be addressed as such.

Further, we note this is at least the sixteenth separate pro se collateral appeal or collateral original proceeding Delgado has filed with this Court, related to circuit court case number 87-35599A.⁴ This Court has on each occasion affirmed the circuit court or otherwise denied Delgado the relief sought. Delgado has engaged in the filing of meritless, frivolous and successive claims notwithstanding repeated adverse determinations. Delgado's latest filing with the trial court, and his appeal of the order denying same, appears to be a malicious attempt to evade the time limitations which would otherwise bar his claim for relief.

⁴ Delgado v. State, 3D18-1349; Delgado v. State, 3D18-1244; Delgado v. State, 3D18-1151; Delgado v. State, 3D15-2078; Delgado v. State, 3D14-2911; Delgado v. State, 3D13-2248; Delgado v. State, 3D12-980; Delgado v. State, 3D12-982; Delgado v. State, 3D10-1513; Delgado v. State, 3D09-1146; Delgado v. State, 3D97-214; Delgado v. Singletary, 3D96-1220; Delgado v. State, 3D95-3562; Delgado v. State, 3D95-2102; Delgado v. Carney, 3D95-1520.

Delgado's actions, in this appeal and in previous proceedings, have caused this Court to expend precious and finite judicial resources which could otherwise be devoted to cases raising legitimate claims. Hedrick v. State, 6 So. 3d 688, 691 (Fla. 4th DCA 2009) (noting: "A legitimate claim that may merit relief is more likely to be overlooked if buried within a forest of frivolous claims.")

While pro se parties must be afforded a genuine and adequate opportunity to exercise their constitutional right of access to the courts, that right is not unfettered. The right to proceed pro se may be forfeited where it is determined, after proper notice and an opportunity to be heard, that the party has abused the judicial process by the continued filing of successive or meritless collateral claims in a criminal proceeding. State v. Spencer, 751 So. 2d 47 (Fla. 1999). As our sister court aptly put it, there comes a point when "enough is enough." Isley v. State, 652 So. 2d 409, 410 (Fla. 5th DCA 1995).

Although termination of the right to proceed pro se will undoubtedly impose a burden on a litigant who may be unable to afford counsel, courts must strike a balance between the pro se litigant's right to participate in the judicial process and the courts' authority to protect the judicial process from abuse.

Therefore, Luis Delgado is hereby directed to show cause, within forty-five days from the date of this opinion, why he should not be prohibited from filing with this Court any further pro se appeals, pleadings, motions, or petitions relating to his

convictions, judgments and sentences in circuit court case number 87-35599A. Absent a showing of good cause, we intend to direct the Clerk of the Third District Court of Appeal to refuse to accept any such papers relating to circuit court case number 87-35599A unless they have been reviewed and signed by an attorney who is a duly licensed member of The Florida Bar in good standing.

Additionally, and absent a showing of good cause, this Court intends to make written findings that Delgado has brought a frivolous or malicious collateral criminal proceeding or has knowingly or with reckless disregard for the truth brought false information before this Court. Should such findings be made, they will be certified and forwarded to the Department of Corrections for consideration of disciplinary action, including the forfeiture of gain time. See § 944.279(1), Fla. Stat. (2019).

Affirmed. Show cause order issued.