

Third District Court of Appeal

State of Florida

Opinion filed October 28, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-995
Lower Tribunal No. 90-29340

Ricardo Montanez,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Tanya Brinkley,
Judge.

Ricardo Montanez, in proper person.

Ashley Moody, Attorney General, for appellee.

Before EMAS, C.J., and GORDO and BOKOR, JJ.

PER CURIAM.

Ricardo Montanez appeals from the trial court's order denying his motion to correct illegal sentence and prohibiting him from proceeding pro se in circuit court case number F90-29340 as a sanction for the repeated filing of meritless pro se motions. We affirm without discussion the trial court's order denying Montanez's motion to correct illegal sentence.

Regarding that portion of the order imposing sanctions, we note this is at least the sixth collateral postconviction motion or petition filed by Montanez directed to circuit court case number F90-29340. We further note this is at least the ninth appeal or original proceeding filed by Montanez in this court since his conviction and sentence in F90-29340 became final in 1994.

Nevertheless, there is nothing in the record to indicate that, before entering its sanctions order prohibiting Montanez from proceeding pro se in circuit court case number F90-29340, the trial court issued an order directing Montanez to show cause why sanctions should not be imposed.

It is true that previous trial court orders denying Montanez's earlier pro se motions for postconviction relief contained a warning, directed to Montanez, that the filing of further frivolous or meritless pro se motions could result in the imposition of sanctions. However, this is insufficient to afford a pro se prisoner the process to which he is due before terminating the right to proceed pro se in collateral postconviction proceedings. Upon issuing the order denying the present motion for

postconviction relief, the trial court was required to issue an order directing Montanez to show cause why he should not be prohibited from proceeding pro se, and allowing Montanez a reasonable time to file a response to that show cause order, before imposing such a sanction. See State v. Spencer, 751 So. 2d 47, 48 (Fla. 1999) (holding that “a trial court must first provide a litigant notice and a reasonable opportunity to respond before prohibiting further pro se attacks on his or her conviction and sentence as a sanction for prior repeated and frivolous motions”); Lee v. State, 45 Fla. L. Weekly D1096 (Fla. 3d DCA May 6, 2020); Chambers v. State, 225 So. 3d 311 (Fla. 3d DCA 2017); Morgan v. State, 76 So. 3d 25 (Fla. 3d DCA 2011); Fitzgerald v. State, 18 So. 3d 1145 (Fla. 3d DCA 2009). Thereafter, the trial court should consider any response filed, together with Montanez’s filing history and other relevant circumstances, determine whether good cause has been shown, and enter an order accordingly. We therefore vacate that portion of the trial court’s order imposing sanctions.

Affirmed in part, reversed in part and remanded.