

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 2004

ENRIQUE M. MALESPIN,	**	
Appellant,	**	
vs.	**	CASE NO. 3D03-2469
THE STATE OF FLORIDA,	**	LOWER
Appellee.	**	TRIBUNAL NO. 00-20209

Opinion filed May 26, 2004.

An appeal under Fla.R.App.P. 9.141(b)(2) from the Circuit Court for Miami-Dade County, David H. Young, Judge.

Enrique M. Malespin, in proper person.

Charles J. Crist, Jr., Attorney General and Consuelo Maingot, Assistant Attorney General, for appellee.

Before COPE, LEVY, and GREEN, JJ.

PER CURIAM.

This is an appeal from the trial court's denial of defendant Enrique Malespin's motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850. Malespin claims he was denied effective assistance of counsel when his attorney failed to inform him that the State's 50-month plea offer would only be available to him for one day. Malespin failed to accept the offer within the time limit and eventually was sentenced to ten years' imprisonment. He alleges that if he had known the offer would be withdrawn in one day, he would have accepted it. Malespin states a legally sufficient claim. See Fla. R. Crim P. 3.171(c)(2)(B); Britt v. State, 352 So. 2d 148, 149 (Fla. 2d DCA 1977) ("A person induced to give up his right to a trial by a misapprehension of circumstances surrounding his plea is entitled to vacation of any judgment and sentence resulting from such a plea."). See also Cottle v. State, 733 So. 2d 963, 969 (Fla. 1999) ("[C]ourts presume prejudice from the inference that a defendant with more, or better, information, would have acted differently.") (internal quotation marks omitted) (quoting Williams v. State, 605 A.2d 103, 110 (Md. 1992)).

As it is not clear from the face of the record whether the plea offer was open for only one day and, if so, whether counsel told Malespin of the limited availability of the offer, we remand for an evidentiary hearing to determine whether the plea offer would be withdrawn after one day and, if so, whether defendant was informed of this.

We find no merit in Malespin's other 3.850 claims.

Affirmed in part, reversed in part, remanded with instructions.