

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed March 11, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-32

Lower Tribunal No. 04-22293

Jename Plez,
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, John Schlesinger, Judge.

Jename Plez, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, SHEPHERD, and SUAREZ, JJ.

PER CURIAM.

This is an appeal of an order denying a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850. We affirm in part and reverse in part.

The defendant was convicted of attempted felony murder, armed robbery, and attempted armed robbery. He alleges that during trial, the detective communicated to the jury the information contained in an anonymous tip which implicated this defendant in this crime. He alleges that his trial counsel was ineffective for failing to object or move for a mistrial.

On appeal from a summary denial of an order denying a motion for postconviction relief, this court is obligated to reverse unless the postconviction record conclusively refutes the claim. Fla. R. App. P. 9.141(b)(2)(D). The State filed a response in the trial court which appears to acknowledge that the comment was made. The State response did not attach the relevant pages of the transcript and failed to address the applicable case law, see Postell v. State, 398 So. 2d 851 (Fla. 3d DCA 1981), and its progeny. As the postconviction record now before us does not conclusively refute the appellant's claim, we reverse as to point one and remand for further proceedings. If the trial court again summarily denies the motion, the court shall attach record excerpts conclusively refuting the appellant's claim. We affirm the trial court's denial of relief with regard to point two.

Affirmed in part, reversed in part, and remanded for further proceedings consistent herewith.