

Third District Court of Appeal

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

Opinion filed February 25, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-132

Lower Tribunal No. 97-2520

Rigoberto Perdomo,
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, Jorge Perez, Judge.

Rigoberto Perdomo, in proper person.

Bill McCollum, Attorney General, for appellee.

Before WELLS, SUAREZ, and SALTER, JJ.

WELLS, J.

This is an appeal from an order denying a Florida Rule of Criminal Procedure 3.850 motion. On appeal from a summary denial of a motion for post-conviction relief, this Court must reverse unless the record shows conclusively that the appellant is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(A), (D).

Appellant's motion raises four claims of ineffective assistance of counsel. The trial court denied relief without holding an evidentiary hearing and attached portions of the record below showing conclusively that appellant is entitled to no relief as to his first claim, regarding the instructions given to the jury at his trial, and his fourth claim, regarding double jeopardy. However, the court below failed to attach those portions of the record that would refute appellant's second and third claims, regarding counsel's advice regarding a plea offer and counsel's failure to pursue a second plea when the opportunity arose.

We, therefore, reverse and remand for either an evidentiary hearing on these two claims or for summary disposition supported by those portions of the record (which shall be attached to the summary disposition order) conclusively showing that appellant is entitled to no relief. See Hilbert v. State, 981 So. 2d 1274, 1274-75 (Fla. 3d DCA 2008); Langdon v. State, 947 So. 2d 460 (Fla. 3d DCA 2006).

Reversed and remanded with instructions.