

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed May 5, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-910

Lower Tribunal No. 05-557-A-K

Mark Holmes,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Monroe County, David J. Audlin, Jr., Judge.

Mark Holmes, in proper person.

Bill McCollum, Attorney General, and Michael C. Greenberg, Assistant Attorney General, for appellee.

Before COPE and SHEPHERD, JJ., and SCHWARTZ, Senior Judge.

SHEPHERD, J.

This is an appeal from an order summarily denying a motion under Florida Rule of Criminal Procedure 3.850. The defendant, Mark Holmes, raises four grounds of ineffective assistance of counsel in his motion. We affirm grounds one and four, finding those claims do not have merit. As for grounds two and three, where the defendant alleges his trial counsel failed to adequately prepare for the competency hearing and call two witnesses for his defense, we reverse because the post-conviction record does not conclusively show the defendant is entitled to no relief. See Fla. R. App. P. 9.141(b)(2)(D). The record now before us merely includes the motion for post-conviction relief, an affidavit of Patricia Silvers, and the trial court's order. Thus, we reverse the order and remand for an evidentiary hearing or for the attachment of record excerpts conclusively showing the appellant is entitled to no relief.

Reversed, in part, and remanded for further proceedings.