

Third District Court of Appeal

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

Opinion filed October 21, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-1688

Lower Tribunal No. 04-1996

Eugene Mack,
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, Peter R. Lopez, Judge.

Eugene Mack, in proper person.

Bill McCollum, Attorney General, for appellee.

Before RAMIREZ, C.J., and LAGOA and SALTER, JJ.

SALTER, J.

Eugene Mack appeals a circuit court order summarily denying a motion under Florida Rule of Criminal Procedure 3.850. We affirm.

The State's response, supplemental response, and appendix were a part of the record below and are before us. Those documents, which include the pertinent trial transcripts, conclusively refute the appellant's claims of ineffective assistance of trial counsel.

In this case, the appellant had been identified by eyewitnesses and had confessed. The allegation that there is a reasonable probability that the outcome of the trial would have been different, but for the allegedly deficient performance of trial counsel, is refuted by the overwhelming and duly-admitted evidence of guilt. We therefore affirm under the ineffective assistance standards set forth in Strickland v. Washington, 466 U.S. 668 (1984), and the principle that the trial court "need not determine whether counsel's performance was deficient when it is clear that the alleged deficiency was not prejudicial." Torres-Arboleda v. Dugger, 636 So. 2d 1321, 1324 (Fla. 1994).

Affirmed.