

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Kayan Emmanuel Smith v. State of Florida

No. 4D2024-1166 (Fla. 4th DCA Apr. 2, 2025) · No. 4D2024-1166 · Decided April 2, 2025

SUMMARY

The Florida Fourth District Court of Appeal affirmed the denial of Kayan Emmanuel Smith’s Florida Rule of Criminal Procedure 3.850 motion. In a specially concurring opinion, Judge Warner addressed the State’s obligation under Florida Rule of Appellate Procedure 9.141(b)(3) to brief contested claims, warning that failure to do so may forfeit the State’s right to respond.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Per Curiam; Kuntz, J.; Artau, J.; Warner, J.
JURISDICTION	Florida District Court of Appeal, Fourth District
DECIDED	April 2, 2025
DOCKET	4D2024-1166
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying a Florida Rule of Criminal Procedure 3.850 motion for postconviction relief.
PRECEDENTIAL VALUE	Published
PARTIES	Kayan Emmanuel Smith v. State of Florida

TOPICS

- appellate procedure post-conviction relief state post-conviction relief criminal procedure

PRACTICE AREAS

- criminal procedure postconviction relief appellate procedure

QUESTIONS PRESENTED

- Whether the circuit court's order denying Smith's rule 3.850 motion should be affirmed.
- Under the specially concurring opinion, whether the State must address all contested issues in its answer brief when a postconviction appeal proceeds under Florida Rule of Appellate Procedure 9.141(b)(3),

including claims summarily denied.

HOLDINGS

1. The order denying Smith's motion for postconviction relief is affirmed.
2. In the specially concurring judge's view, when an evidentiary hearing is held on at least one claim and the appeal proceeds under rule 9.141(b)(3), the appellee must address all issues raised in the initial brief that it contests; failure to do so may forfeit the State's right to respond and may be viewed as a concession of error.

KEY QUOTATIONS

“Thus, when an evidentiary hearing is held as to at least one claim, appellee has the duty to address all issues raised in the initial brief that appellee contests.” (2)

“I completely agree with Cuomo and would caution the State in future appeals that it may forfeit its right to respond to a summarily denied claim in a rule 9.141(b)(3) appeal, if the State does not address the claim in its answer brief.” (2)

FACTUAL BACKGROUND

The opinion does not discuss the underlying criminal facts. It states only that Smith sought postconviction relief under rule 3.850 and that the circuit court denied his motion.

PROCEDURAL HISTORY

Smith appealed the Circuit Court for the Fifteenth Judicial Circuit's denial of his rule 3.850 motion. The Fourth District affirmed. Judge Warner specially concurred to address the State's practice of declining to brief summarily denied claims in rule 9.141(b)(3) appeals unless ordered to respond.

DISPOSITION

affirmed

CASES CITED

- Davis v. State, 660 So. 2d 1161 (Fla. 4th DCA 1995)
- Anderson v. Ewing, 768 So. 2d 1161, 1166 n. 1 (Fla. 4th DCA 2000)
- Cuomo v. State, 257 So. 3d 584, 586 (Fla. 1st DCA 2018)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT KAYAN EMMANUEL SMITH, Appellant, v. STATE OF FLORIDA, Appellee. No. 4D2024-1166 [April 2, 2025] Appeal of order denying rule 3.850 motion from the Circuit Court for the Fifteenth Judicial

Circuit, Palm Beach County; Howard K. Coates, Jr., Judge; L.T. Case No. 502015CF009126A. Kayan Emmanuel Smith, Graceville, pro se.

James Uthmeier, Attorney General, Tallahassee, and Richard Valuntas, Senior Assistant Attorney General, West Palm Beach, for appellee. PER CURIAM. Affirmed. KUNTZ and ARTAU, JJ., concur. WARNER, J., concurs specially with opinion. WARNER, J., concurring specially. I concur in the affirmance of the denial of appellant's motion for postconviction relief. I write to address a practice by the State of expressly refusing to address the merits of summarily denied claims in its answer brief when the appeal is brought pursuant to Florida Rule of Appellate Procedure 9.141(b)(3).

Instead, we are told that the claim will not be addressed unless we direct the State to respond. This practice does not comport with the Florida Rules of Appellate Procedure. The Florida Rules of Appellate Procedure differentiate between claims which have been summarily denied in their entirety and those on which an evidentiary hearing is held as to at least one claim.

For claims entirely disposed of summarily, rule 9.141(b)(2)(C)(i) provides that briefs are not required, although an appellant may file a brief. As to appellee, the rule provides that "[t]he court may request a response from the appellee before ruling, regardless of whether the appellant filed an initial brief." Fla. R. App. P. 9.141(b)(2)(C)(ii).

We followed this practice in *Davis v. State*, 660 So. 2d 1161 (Fla. 4th DCA 1995), which was an appeal of a summary denial of all postconviction claims. Where an evidentiary hearing is held as to one or more claims, the process is different and governed by rule 9.141(b)(3), which provides for briefing typical of any direct appeal. See Fla. R. App. P. 9.141(b)(3)(C) ("Initial briefs must be served within 30 days of service of the record or its index.

Additional briefs must be served as prescribed by rule 9.210."). Thus, when an evidentiary hearing is held as to at least one claim, appellee has the duty to address all issues raised in the initial brief that appellee contests. Otherwise, the appellate court could view the failure to address an issue as a concession of error. See, e.g., *Anderson v. Ewing*, 768 So.

2d 1161, 1166 n.1 (Fla. 4th DCA 2000) ("Anderson as much as conceded this issue by failing to address it at all in his answer brief."). I note that in *Cuomo v. State*, 257 So. 3d 584 (Fla. 1st DCA 2018), the First District interpreted the rules in the same manner as I have in this opinion, warning, "[w]hen a postconviction appeal falls under Rule 9.141(b)(3), the State's refusal to brief an issue regarding a summarily- denied claim constitutes a forfeiture of the State's right to respond to the appellant's brief." *Id.* at 586.

I completely agree with Cuomo and would caution the State in future appeals that it may forfeit its right to respond to a summarily denied claim in a rule 9.141(b)(3) appeal, if the State does not

address the claim in its answer brief. * * * Not final until disposition of timely filed motion for rehearing. 2

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-district-court-of-appeal-fourth-district-district-court-of-appeal-of-the-state-of-florida-fo/2025/kayan-emmanuel-smith-v-state-of-florida-0f5dcr20>