

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Miguel Pestano v. State of Florida

No. 3D23-2075 · No. 3D23-2075 · Decided April 9, 2025

SUMMARY

The Third District Court of Appeal of Florida affirmed the denial of Miguel Pestano’s post-conviction claim alleging ineffective assistance of counsel. The court deferred to the trial court’s factual findings that Pestano voluntarily declined to testify, counsel’s advice was reasonable, and counsel was not ineffective for failing to call Pestano’s girlfriend as a witness.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	Mark H. Jones; Logue, C.J.; Lobree, J.; Gooden, J.
JURISDICTION	Third District Court of Appeal of Florida
DECIDED	April 9, 2025
DOCKET	3D23-2075
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the denial of a post-conviction claim alleging ineffective assistance of counsel.
STANDARD OF REVIEW	On appellate review of the denial of an ineffective-assistance claim after an evidentiary hearing, the trial court's factual findings are entitled to deference when supported by competent, substantial evidence, and the appellate court does not reweigh the evidence.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Miguel Pestano v. State of Florida

TOPICS

- post-conviction relief
- ineffective assistance
- appellate procedure
- standard of review
- criminal procedure

PRACTICE AREAS

- criminal post-conviction
- ineffective assistance of counsel
- Florida appellate procedure

QUESTIONS PRESENTED

1. Whether trial counsel was ineffective for advising Pestano not to testify.
2. Whether trial counsel was ineffective for failing to call Pestano's girlfriend as a witness.
3. Whether the appellate court could reweigh conflicting testimony from an evidentiary hearing when reviewing the denial of post-conviction relief.

HOLDINGS

1. An appellate court does not reweigh the evidence on review of the denial of an ineffective-assistance claim following an evidentiary hearing; factual findings are entitled to deference when supported by competent, substantial evidence.
2. The ineffective-assistance claim based on advice not to testify failed because the trial court found that Pestano voluntarily decided not to testify and that counsel's advice was reasonable in light of Pestano's prior felony conviction and counsel's assessment of the victim's credibility.
3. Counsel was not ineffective for failing to call Pestano's girlfriend because she did not witness circumstances pertinent to the prosecution, including Pestano's statement to police, and the trial court found that counsel's performance did not fall below professional standards.

KEY QUOTATIONS

“As an appellate court, we do not re-weigh the evidence.” (2)

“In an appellate court’s review of the denial of a claim of ineffective assistance of trial counsel after an evidentiary hearing, the trial court’s factual findings are entitled to deference if supported by competent, substantial evidence.” (2)

FACTUAL BACKGROUND

Pestano asserted that his trial counsel was ineffective in advising him not to testify and in failing to call his girlfriend as a witness. After an evidentiary hearing at which Pestano and trial counsel gave conflicting accounts, the trial court credited trial counsel. The court found that Pestano voluntarily chose not to testify, that counsel's advice was reasonable given Pestano's prior felony conviction and counsel's assessment of the victim's credibility, and that the girlfriend had not witnessed circumstances pertinent to the prosecution, including Pestano's statement to police.

PROCEDURAL HISTORY

After an extended evidentiary hearing, the Circuit Court for Monroe County denied Pestano's ineffective-assistance claim. The trial court credited trial counsel's testimony over Pestano's testimony and found that Pestano voluntarily chose not to testify, counsel's advice was reasonable, and counsel was not professionally deficient for failing to call Pestano's girlfriend. Pestano appealed, and the Third District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Bernabeu v. State, 354 So. 3d 633, 635 n.4 (Fla. 3d DCA 2023)
- Arbelaez v. State, 898 So. 2d 25, 32 (Fla. 2005)

OPINION

Miguel Pestano v. the State of Florida

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed April 9, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D23-2075 Lower Tribunal No. 2018-165-A-K _____ Miguel Pestano, 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, Mark H. Jones, Judge. The Law Office of Robert David Malove, P.A., and Hani Demetrious and Robert David Malove (Fort Lauderdale), for appellant. James Uthmeier, Attorney General, and Magaly Rodriguez, Assistant Attorney General, for appellee. Before LOGUE, C.J., and LOBREE and GOODEN, JJ. LOGUE, C.J. Appellant appeals the denial of his post-conviction claim that his counsel was ineffective. After an extended evidentiary hearing in which the Appellant and his trial counsel gave diametrically opposed accounts of the matters at issue, the trial court credited the account of the Appellant's trial counsel over the account of the Appellant. In particular, the trial court expressly found that (1) the Appellant voluntarily decided not to testify; (2) trial counsel's advice not to testify was reasonable in light of the Appellant's prior felony conviction and the trial counsel's perception that the jury would not believe the victim's testimony; and (3) trial counsel's failure to call the Appellant's girlfriend as a witness did not fall below professional standards when she did not witness any of the circumstances pertinent to the prosecution, including the Appellant's statement to the police. As an appellate court, we do not re-weigh the evidence. Under these circumstances, we are constrained to affirm. Bernabeu v. State, 354 So. 3d 633, 635 n.4 (Fla. 3d DCA 2023) ("In an appellate court's review of the denial of a claim of ineffective assistance of trial counsel after an evidentiary hearing, the trial court's factual findings are entitled to deference if supported by competent, substantial evidence." (citing Arbelaez v. State, 898 So. 2d 25, 32 (Fla. 2005))). 2 Affirmed. 3