

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Miguel Pestano v. State of Florida

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

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