

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Roberson v. State

792 So. 2d 585 (Fla. Dist. Ct. App. 2001) · Decided August 8, 2001

SUMMARY

The Florida Fourth District Court of Appeal held that Roberson's postconviction motion was timely under *Wood v. State*. The court affirmed denial of his claim that counsel failed to preserve an appellate issue because that allegation involved a legal error not cognizable in *coram nobis*. It reversed and remanded for consideration of claims that counsel misinformed Roberson about the nature of his plea and that the trial court failed to advise him of the rights he was waiving.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Stone; Farmer; Hazouri
JURISDICTION	Florida
DECIDED	August 8, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of a motion for postconviction relief as untimely.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Lewis Benjamin Roberson v. State of Florida

TOPICS

[state post-conviction relief](#)[post-conviction relief](#)[criminal procedure](#)[plea bargaining](#)[appellate procedure](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Roberson's postconviction motion was timely under *Wood v. State* despite the former custody requirement in Florida Rule of Criminal Procedure 3.850.
2. Whether a claim that trial counsel failed to preserve an issue for appeal was cognizable in a *coram nobis*-based postconviction proceeding.

3. Whether claims that counsel misinformed Roberson about the nature of his plea and that the trial court failed to advise him of waived rights were cognizable and entitled to further proceedings.

HOLDINGS

1. The motion was timely under Wood v. State because Wood eliminated the custody requirement and afforded defendants adjudicated before that decision two years from its filing date to bring claims traditionally cognizable under coram nobis.
2. The claim that trial counsel failed to preserve an issue for appeal was a legal-error claim and was not cognizable in a coram nobis petition; denial of relief on that claim was affirmed.
3. Roberson was entitled to seek postconviction relief based on allegations that counsel misinformed him that he was entering a misdemeanor plea and that the trial court failed to advise him of the rights he was giving up; the case was remanded for further proceedings on those claims only.

KEY QUOTATIONS

“We reverse and remand for further proceedings on those two claims only.” (792 So. 2d at 587)

FACTUAL BACKGROUND

Roberson entered a plea in 1995 and later sought postconviction relief. He alleged that his counsel misinformed him that he was pleading to a misdemeanor and that the trial court failed to advise him of the rights he would waive by entering the plea. He also alleged that counsel failed to preserve an issue for appeal and claimed that he had been prevented from seeking relief because he received a suspended sentence and could not satisfy the then-existing custody requirement.

PROCEDURAL HISTORY

The trial court denied Roberson's motion for postconviction relief on the ground that it was untimely. The Fourth District Court of Appeal held that the motion was timely under Wood v. State, affirmed denial of the claim concerning counsel's failure to preserve an appellate issue, and reversed and remanded for further proceedings on claims that counsel misinformed Roberson about the plea and that the trial court failed to advise him of the rights he was waiving.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings on Roberson's claims that counsel misinformed him that he was entering a misdemeanor plea and that the trial court failed to advise him of the rights he was giving up by entering the plea. The claim concerning counsel's failure to preserve an issue for appeal remains denied.

CASES CITED

- Wood v. State, 750 So. 2d 592, 595 (Fla. 1999)
- Hallman v. State, 371 So. 2d 482, 484-85 (Fla. 1979)
- Jones v. State, 591 So. 2d 911 (Fla. 1991)
- Smith v. State, 784 So. 2d 460 (Fla. 4th DCA 2000)
- Peart v. State, 756 So. 2d 42, 45 (Fla. 2000)

OPINION

PER CURIAM.

PER CURIAM. The trial court denied Lewis Benjamin Roberson's Motion for Postconviction Relief on the ground that it was untimely. We conclude that the motion was timely under Wood v. State, 750 So.2d 592 (Fla.1999). Roberson, in his motion, challenged the voluntariness of his 1995 plea. He alleged that he had been prevented from seeking postconviction relief because he received a suspended sentence and therefore could not meet the custody requirement set forth in Florida Rule of Criminal Procedure 3.850 (1995).

Wood amended the rule, deleted the requirement and provided. "[a]ll defendants adjudicated prior to this opinion shall have two years from the filing date within which to file claims traditionally cognizable under coram nobis." Id. at 595. Coram nobis was traditionally available to obtain relief from mistakes of fact, but not from errors of law. Hallman v. State, 371 So.2d 482, 484-85 (Fla.1979), superseded on other grounds, Jones v. State, 591 So.2d 911 (Fla.1991).

Roberson's complaint that his trial counsel failed to preserve an issue for appeal is the type of legal error that could not have been raised in a coram nobis petition. We affirm the denial of the motion on that ground.

However, Roberson was entitled to seek relief based on his allegations that his counsel misinformed him that he was entering a plea to a misdemeanor and that the trial court failed to advise him of the rights he was giving up by entering his plea. See Smith v. State, 784 So.2d 460 (Fla. 4th DCA 2000)(misadvice of counsel can be raised in motion filed pursuant to *587Wood), rehearing denied, 784 So.2d at 461 (Fla.

4th DCA 2001); Peart v. State, 756 So.2d 42, 45 (Fla.2000)(petition for writ of error coram nobis was the traditional way for noncustodial movants to allege trial court's noncompliance with Florida Rule of Criminal Procedure 3.172(c)).

We reverse and remand for further proceedings on those two claims only. STONE, FARMER and HAZOURI, JJ., concur.