

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Billy Baker v. State of Florida

Baker · No. No. 3D25-1789 · Decided April 8, 2026

SUMMARY

The Third District Court of Appeal of Florida denied Billy Baker’s petition for a writ of habeas corpus alleging ineffective assistance of appellate counsel. The court held that counsel was not deficient for failing to raise an argument based on precedent from which the Florida Supreme Court had receded, and rejected Baker’s second argument without discussion.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	SCALES, C.J.; LOBREE, J.; GOODEN, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	April 8, 2026
DOCKET	No. 3D25-1789
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original-jurisdiction habeas corpus petition alleging ineffective assistance of appellate counsel after affirmance of a murder conviction and life sentence.
STANDARD OF REVIEW	To establish ineffective assistance of appellate counsel, the petitioner must identify specific errors or omissions showing performance outside the range of professionally acceptable performance and show that the deficiency compromised the appellate process so as to undermine confidence in the fairness and correctness of the appellate result.
PRECEDENTIAL VALUE	Published
PARTIES	Billy Baker, Petitioner v. State of Florida, Respondent

TOPICS

- habeas corpus
- ineffective assistance
- appellate procedure
- post-conviction relief
- criminal procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

appellate procedure

habeas corpus

ineffective assistance

QUESTIONS PRESENTED

1. Whether appellate counsel was ineffective for failing to argue that the trial court committed fundamental error by instructing the jury on the lesser-included offense of attempted voluntary manslaughter by act.
2. Whether Baker was entitled to habeas corpus relief based on his second asserted ground, which the court rejected without further discussion.

HOLDINGS

1. Baker was not entitled to habeas corpus relief because appellate counsel was not deficient for failing to raise an argument based on Montgomery; the Florida Supreme Court had already receded from Montgomery, and the argument would have been meritless and rejected by the district court.

KEY QUOTATIONS

“Petitioner must show 1) specific errors or omissions which show that appellate counsel’s performance deviated from the norm or fell outside the range of professionally acceptable performance and 2) the deficiency of that performance compromised the appellate process to such a degree as to undermine confidence in the fairness and correctness of the appellate result.” (at 1)

“Counsel cannot be deemed deficient for failing to make a meritless argument.” (at 2)

FACTUAL BACKGROUND

Baker was convicted of second-degree murder for the killing of his fiancée, Candice Cooper, and received a life sentence. After the conviction and sentence were affirmed on direct appeal, Baker alleged that appellate counsel was ineffective for failing to argue that the trial court committed fundamental error in instructing the jury on attempted voluntary manslaughter by act.

PROCEDURAL HISTORY

Baker was convicted of second-degree murder and sentenced to life in prison. The Third District affirmed the conviction and sentence in *Baker v. State*, 364 So. 3d 1072 (Fla. 3d DCA 2023). Baker then petitioned the Third District for a writ of habeas corpus, alleging ineffective assistance of appellate counsel. The court denied the petition.

DISPOSITION

writ_denied

CASES CITED

- *Baker v. State*, 364 So. 3d 1072 (Fla. 3d DCA 2023)
- *Wilson v. Wainwright*, 474 So. 2d 1162, 1163 (Fla. 1985)
- *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010)

- Knight v. State, 286 So. 3d 147, 154 (Fla. 2019)
- Hoffman v. Jones, 280 So. 2d 431, 440 (Fla. 1973)
- Solares v. City of Miami, 166 So. 3d 887, 888 (Fla. 3d DCA 2015)
- Merck v. State, 124 So. 3d 785, 800 (Fla. 2013)
- Rutherford v. Moore, 774 So. 2d 637, 643 (Fla. 2000)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed April 8, 2026. Not final until disposition of timely filed motion for rehearing. _____ No. 3D25-1789 Lower Tribunal No. 18-CF-97-A-K _____ Billy Baker, Petitioner, vs. State of Florida, Respondent. A Case of Original Jurisdiction – Habeas Corpus. Billy Baker, in proper person.

James Uthmeier, Attorney General, and Daniel Colmenares, Assistant Attorney General, for respondent. Before SCALES, C.J., and LOBREE, and GOODEN, JJ. PER CURIAM. Petitioner Billy Baker was convicted of the second degree murder of his fiancée, Candice Cooper. He was sentenced to life in prison.

We affirmed his conviction and sentence. See Baker v. State, 364 So. 3d 1072 (Fla. 3d DCA 2023). Baker now petitions this Court for a writ of habeas corpus. He alleges ineffective assistance of appellate counsel during the direct appeal.

The criteria for proving ineffective assistance of appellate counsel parallel the Strickland standard for ineffective trial counsel: Petitioner must show 1) specific errors or omissions which show that appellate counsel’s performance deviated from the norm or fell outside the range of professionally acceptable performance and 2) the deficiency of that performance compromised the appellate process to such a degree as to undermine confidence in the fairness and correctness of the appellate result.

Wilson v. Wainwright, 474 So. 2d 1162, 1163 (Fla. 1985). Relying on State v. Montgomery, 39 So. 3d 252 (Fla. 2010), Baker asserts that appellate counsel failed to argue that the trial court committed fundamental error when it instructed the jury on the lesser-included crime of attempted voluntary manslaughter by act. But before Baker’s case even went to trial, the Florida Supreme Court receded from Montgomery as it was “predicated on Florida’s jury pardon doctrine.” Knight v. State, 286 So.

3d 147, 154 (Fla. 2019). Thus, any argument relying on Montgomery would have been rejected by our Court. See Hoffman v. Jones, 280 So. 2d 431, 2 440 (Fla. 1973) (“District Court of Appeal does not have the authority to overrule a decision of the Supreme Court of Florida.”); Solares v. City of Miami, 166 So. 3d 887, 888 (Fla. 3d DCA 2015) (“As judges sitting on a District Court of

Appeal, we are bound to follow the case law set forth by the Florida Supreme Court.”) (citation modified). “Counsel cannot be deemed deficient for failing to make a meritless argument.” *Merck v. State*, 124 So.

3d 785, 800 (Fla. 2013). See also *Rutherford v. Moore*, 774 So. 2d 637, 643 (Fla. 2000) (“If a legal issue would in all probability have been found to be without merit had counsel raised the issue on direct appeal, the failure of appellate counsel to raise the meritless issue will not render appellate counsel’s performance ineffective.”) (internal citations omitted).

1 Petition denied. 1 We reject Baker’s second argument without further discussion. 3