

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Jimmie M. Evans v. The State of Florida

Evans · No. 3D24-1199 · Decided July 16, 2025

SUMMARY

The Third District Court of Appeal of Florida affirmed the denial of Jimmie M. Evans's post-conviction motion alleging ineffective assistance of counsel. The court cited authorities concerning claims that counsel failed to call witnesses and held that the record supported counsel's strategic decision.

CASE DETAILS

|                       |                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------|
| COURT                 | Third District Court of Appeal of Florida                                                                   |
| WRITING FOR THE COURT | SCALES, C.J.; LINDSEY, J.; GORDO, J.                                                                        |
| JURISDICTION          | Third District Court of Appeal of Florida                                                                   |
| DECIDED               | July 16, 2025                                                                                               |
| DOCKET                | 3D24-1199                                                                                                   |
| DISPOSITION           | affirmed                                                                                                    |
| PROCEDURAL POSTURE    | Appeal from the denial of a state post-conviction relief motion alleging ineffective assistance of counsel. |
| PRECEDENTIAL VALUE    | published                                                                                                   |
| PARTIES               | Jimmie M. Evans v. The State of Florida                                                                     |

TOPICS

- post-conviction relief
- ineffective assistance
- right to counsel
- criminal procedure
- appellate procedure

PRACTICE AREAS

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

QUESTIONS PRESENTED

- Whether Evans was entitled to post-conviction relief or an evidentiary hearing on an ineffective-assistance claim based on counsel's failure to call a witness or witnesses.
- Whether the record conclusively refuted the claim because counsel's decision not to call the witnesses was a reasonable tactical or strategic decision.

## HOLDINGS

1. An evidentiary hearing is not required when the record conclusively refutes the ineffective-assistance claim or the claim is otherwise procedurally barred.
2. A decision not to call certain defense witnesses ordinarily constitutes a matter of counsel's personal judgment and trial strategy, and does not establish ineffective assistance when the decision was a reasonable strategic choice.

## KEY QUOTATIONS

*“A defendant is entitled to an evidentiary hearing on a claim that counsel was ineffective for failing to call a witness to testify unless the motion is conclusively refuted by the record or is otherwise procedurally barred.”* (2)

*“[S]trategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel’s decision was reasonable under the norms of professional conduct.”* (2)

*“A decision not to raise certain possible defenses or call certain defense witnesses is ordinarily a matter of personal judgment and strategy within the prerogatives of defense counsel.”* (2)

## FACTUAL BACKGROUND

The opinion concerns a post-conviction claim that defense counsel was ineffective for failing to call a witness or witnesses, apparently including alibi witnesses. The appellate court relied on the principle that counsel's decisions about defenses and defense witnesses are ordinarily matters of professional judgment and strategy, and that an evidentiary hearing is unnecessary when the record conclusively refutes the claim or the claim is procedurally barred.

## PROCEDURAL HISTORY

Evans appealed to the Third District Court of Appeal from the Circuit Court for Miami-Dade County. The appellate court affirmed the lower court's disposition, concluding that the cited record and governing authorities supported denial of the ineffective-assistance claim.

## DISPOSITION

affirmed

## CASES CITED

- *Castro v. State*, 240 So. 3d 877, 878 (Fla. 5th DCA 2018)
- *Occhicone v. State*, 768 So. 2d 1037, 1048 (Fla. 2000)
- *Thomas v. State*, 121 So. 3d 71, 74 (Fla. 3d DCA 2013)
- *State v. Eby*, 342 So. 2d 1087, 1089 (Fla. 2d DCA 1977)
- *Brown v. State*, 907 So. 2d 612, 613 (Fla. 3d DCA 2005)

## OPINION

### PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed July 16, 2025. Not final until disposition of timely filed motion for rehearing. \_\_\_\_\_ No. 3D24-1199 Lower Tribunal No. F11-16168 \_\_\_\_\_ Jimmie M. Evans, Appellant, vs. The State of Florida, Appellee. An Appeal from the Circuit Court for Miami-Dade County, Milton Hirsch, Judge.

Jimmie M. Evans, in proper person. James Uthmeier, Attorney General, and David Llanes, Assistant Attorney General, for appellee. Before SCALES, C.J., and LINDSEY and GORDO, JJ. PER CURIAM. Affirmed. See *Castro v. State*, 240 So. 3d 877, 878 (Fla. 5th DCA 2018) (“A defendant is entitled to an evidentiary hearing on a claim that counsel was ineffective for failing to call a witness to testify unless the motion is conclusively refuted by the record or is otherwise procedurally barred.”); *Occhicone v. State*, 768 So.

2d 1037, 1048 (Fla. 2000) (“[S]trategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel’s decision was reasonable under the norms of professional conduct.”); *Thomas v. State*, 121 So. 3d 71, 74 (Fla. 3d DCA 2013) (“A decision not to raise certain possible defenses or call certain defense witnesses is ordinarily a matter of personal judgment and strategy within the prerogatives of defense counsel.” (quoting *State v. Eby*, 342 So.

2d 1087, 1089 (Fla. 2d DCA 1977))); *Brown v. State*, 907 So. 2d 612, 613 (Fla. 3d DCA 2005) (“The record reflects that the failure of defense counsel to call the alibi witnesses was a tactical decision.... [A]s the record conclusively refutes the defendant’s claim that defense counsel provided ineffective assistance of counsel, we affirm the order denying the defendant’s motion for postconviction relief.”).