

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Marvisha McGregor v. The State of Florida

No. 3D22-0971 (Fla. 3d DCA Sept. 21, 2022) · No. No. 3D22-0971 · Decided September 21, 2022

SUMMARY

The Third District Court of Appeal reversed the summary denial of Marvisha McGregor's Florida Rule of Criminal Procedure 3.850 motion. The court held that the record attachments did not refute her allegation that counsel failed to advise her of a possible defense before she entered a guilty plea and remanded for an evidentiary hearing.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Miller, J.; Logue, J.; Lindsey, J.
JURISDICTION	Florida
DECIDED	September 21, 2022
DOCKET	No. 3D22-0971
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the summary denial of a Florida Rule of Criminal Procedure 3.850 motion for postconviction relief.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion
PARTIES	Marvisha McGregor v. The State of Florida

TOPICS

ineffective assistance plea bargaining state post-conviction relief appellate procedure criminal procedure

PRACTICE AREAS

criminal procedure post-conviction relief ineffective assistance of counsel plea bargaining

QUESTIONS PRESENTED

1. Whether the trial court properly summarily denied McGregor's Rule 3.850 motion alleging that counsel failed to advise her of a possible defense and that she would not have pleaded guilty had she been properly advised.

2. Whether the allegations and record required an evidentiary hearing.

HOLDINGS

1. Summary denial was improper because the attachments to the trial court's order did not refute McGregor's allegations that counsel failed to advise her of a possible defense and that she would not have pleaded guilty had she known of it.

KEY QUOTATIONS

“A claim of ineffective assistance of counsel for failure to advise a defendant of a potential defense can state a valid claim if the defendant was unaware of the defense and can establish that a reasonable possibility exists that he would not have entered his plea if properly advised.” (2)

FACTUAL BACKGROUND

McGregor alleged that her attorney failed to apprise her of a possible defense before she entered a guilty plea. She further alleged that, had she been informed of the defense, she would not have pleaded guilty. The appellate court determined that the record attachments relied upon by the trial court did not refute those allegations.

PROCEDURAL HISTORY

McGregor moved for postconviction relief under Florida Rule of Criminal Procedure 3.850, alleging ineffective assistance of counsel for failing to advise her of a possible defense and asserting that she would not have pleaded guilty had she known of it. The circuit court summarily denied the motion. The Third District Court of Appeal held that the attachments to the denial order did not refute her allegations and remanded for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct an evidentiary hearing on McGregor's Rule 3.850 claim.

CASES CITED

- Jacobson v. State, 171 So. 3d 188, 191 (Fla. 4th DCA 2015)
- Curry v. State, 333 So. 3d 359, 360 (Fla. 3d DCA 2022)
- Prestano v. State, 210 So. 3d 772, 774 (Fla. 5th DCA 2017)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed September 21, 2022. Not final until disposition of timely filed motion for rehearing. _____ No. 3D22-0971 Lower

Tribunal No. F17-10013 _____ Marvisha McGregor, Appellant, vs. The State of Florida, Appellee. An appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Carlos J. Martinez, Public Defender, and Andrew Stanton, Assistant Public Defender, for appellant. Ashley Moody, Attorney General, and Sandra Lipman, Assistant Attorney General, for appellee. Before LOGUE, LINDSEY, and MILLER, JJ. MILLER, J. Appellant, Marvisha McGregor, challenges the trial court's summary denial of her motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850.

In her motion, appellant alleged her attorney failed to apprise her of a possible defense and that had she been aware of the defense, she would not have entered a plea of guilty. On appeal, she contends the attachments to the court's order do not refute her allegations.

We agree. Accordingly, we reverse and remand for the trial court to conduct an evidentiary hearing. See *Jacobson v. State*, 171 So. 3d 188, 191 (Fla. 4th DCA 2015) ("A claim of ineffective assistance of counsel for failure to advise a defendant of a potential defense can state a valid claim if the defendant was unaware of the defense and can establish that a reasonable possibility exists that he would not have entered his plea if properly advised."); see also *Curry v. State*, 333 So.

3d 359, 360 (Fla. 3d DCA 2022) (finding claim of ineffective assistance of counsel raised in motion for postconviction relief legally sufficient and unrefuted by record evidence, meriting evidentiary hearing); *Prestano v. State*, 210 So. 3d 772, 774 (Fla. 5th DCA 2017) (reversing denial of motion for postconviction relief where trial court relied on record evidence that did not refute allegation of ineffective counsel).

Reversed and remanded. 2