DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JROKTON WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-2411

July 28, 2021

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Pasco County; Kimberly Campbell, Judge.

Michael Ufferman, Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

PER CURIAM.

Jrokton Williams appeals from the order summarily denying his motion filed under Florida Rule of Criminal Procedure 3.850. We reverse and remand for further proceedings.

The postconviction record reflects that a jury found Mr. Williams guilty of aggravated assault on a law enforcement officer and that the trial court sentenced him to fifteen years' imprisonment as a habitual felony offender with a three-year mandatory minimum term pursuant to section 784.07(2)(c), Florida Statutes (2015). *See* § 784.07(2)(c) (providing for reclassification of an aggravated assault from a third-degree felony to a second-degree felony when a person knowingly commits the crime upon a person working in a designated position and for a minimum term of three years' imprisonment when a person commits the crime against a law enforcement officer). Mr. Williams appealed his judgment and sentence, and this court affirmed without written opinion. *Williams v. State*, 257 So. 3d 962 (Fla. 2d DCA 2018) (table decision).

Mr. Williams claimed in ground one of his rule 3.850 motion that his trial counsel was ineffective for incorrectly advising him that he faced a maximum sentence of fifteen years' imprisonment and for not informing him when they discussed the State's three-year plea offer that he could be sentenced to thirty years' imprisonment as a habitual felony offender under section 775.084(4)(a)2. Mr. Williams alleged that had counsel advised him

that he faced the enhanced sentence, he would have accepted the State's offer.[1]

The postconviction court ruled:

> This claim is without merit. The Habitual Felony Offender designation placed a minimum mandatory sentence of 3 years' incarceration on the charge,[2] which was the State's offer at the December 6, 2016 pretrial conference for a plea. During that same pretrial conference, the Court told the Defendant that the maximum exposure the Defendant had on this charge was 15 years' incarceration. Ultimately, the Defendant was sentenced to 15 years' incarceration. Assuming trial counsel told the Defendant that the maximum sentence he could receive was 15 years' incarceration, and that the advice was incorrect, the Defendant would not have been prejudiced as he was sentenced to the same amount of time that he believed he could have been sentenced.

The postconviction court erred because it did not employ the prejudice analysis set forth by the supreme court in *Alcorn v. State,* 121 So. 3d 419, 432 (Fla. 2013), which dictates that "[p]rejudice . . . is determined based upon a consideration of the circumstances as

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[1] Mr. Williams further alleged, consistent with the requirements set forth in *Alcorn v. State*, 121 So. 3d 419, 430 (Fla. 2013), that the prosecutor would not have withdrawn the offer, the trial court would have accepted the offer, and his sentence would have been less severe than the sentence imposed.

[2] The three-year minimum mandatory term was required by section 784.07(2)(c), not because the trial court found that Mr. Williams qualified as a habitual felony offender.

viewed *at the time of the offer* and what would have been done *with proper and adequate advice*."

The transcript of the pretrial conference that the postconviction court attached to its order reflects that the week before trial, the trial court asked the prosecutor, "[I]f Mr. Williams wanted to resolve this case today what would you be willing to do to resolve his case today?" The prosecutor responded, "[T]here is a three-year minimum mandatory and it's up to 40 years so we would be offering three-year minimum mandatory today if he was to plea." The trial court explained to Mr. Williams his options and stated the following with regard to his exposure if he chose to proceed to trial:

> Aggravated assault on a law enforcement officer is a second-degree felony so your maximum possible exposure is 15 years prison and there is a minimum mandatory. If you're found guilty as charged I have to impose the minimum mandatory, I don't have any choice in that matter. It's not optional for me.

Mr. Williams did not accept the offer or ask questions, and his counsel made no comment.

While the prosecutor's explanation to the trial court that Mr. Williams faced forty years' imprisonment could, in other circumstances, conclusively refute Mr. Williams' allegation that he

would have accepted the State's offer if he had known he faced the lesser sentence of thirty years in prison, the limited postconviction record does not allow us to reach that conclusion. It does not reflect that the prosecutor accurately calculated Mr. Williams' maximum exposure for this offense at forty years[3] or demonstrate that Mr. Williams had reason to rely on the prosecutor's calculation rather than the trial court's statement.

In ground two, Mr. Williams claimed that he rejected the State's three-year plea offer because his trial counsel unreasonably advised "that he had case law that would defeat the State's case and would result in a judgment of acquittal." Mr. Williams alleged that had trial counsel not "overstat[ed] the strength of his alleged defense," he would have accepted the State's three-year plea offer. The postconviction court denied this claim, ruling "[t]he fact that the motion for judgment of acquittal was denied does not necessarily mean that trial counsel acted unreasonably if he advised the Defendant to not take the plea and to instead go to

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[3] As noted above, aggravated assault on a law enforcement officer is a second-degree felony. Mr. Williams faced up to thirty years' imprisonment as a habitual felony offender under section 775.084(4)(a)2.

trial." It did not address Mr. Williams' claim that his trial counsel unreasonably interpreted caselaw when assessing the strength of the State's case and therefore unreasonably advised Mr. Williams that he would prevail on motion for judgment of acquittal.

Accordingly, we reverse the postconviction court's order summarily denying Mr. Williams' motion, and we remand for the postconviction court to reconsider each of Mr. Williams' three claims.[4]

KELLY, VILLANTI, and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.

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[4] In ground three, Mr. Williams alleged that the cumulative effect of trial counsel's deficient acts and omissions constituted ineffective assistance of trial counsel.