

422 So.3d 651

District Court of Appeal of Florida, Fifth District.

David Stuart KLUG, Appellant,

v.

STATE of Florida, Appellee.

Case No. 5D2024-1779

|

October 24, 2025

Synopsis

Background: Following his conviction, defendant filed motion for postconviction relief. The Circuit Court, 18th Judicial Circuit, Brevard County, [Charles Grooms Crawford, J.](#), summarily denied the motion. Defendant appealed.

[Holding:] The District Court of Appeal, [Wallis, J.](#), held that District Court of Appeal would reverse and remand for consideration of all of defendant's claims.

Reversed and remanded with instructions.

Procedural Posture(s): Appellate Review; Post-Conviction Review.

West Headnotes (7)

[1] Criminal Law 🔑 [Remand for amplification of record](#)

District Court of Appeal would reverse denial of ground in motion for postconviction relief which alleged that two witnesses were available at time of trial to challenge credibility of victim with prior inconsistent statements and order postconviction court to attach supporting documentation as well as explanation of reasoning for ruling; while postconviction court found victim was impeached during trial, her credibility was central to case and presentation of additional witnesses was important to defendant's defense, postconviction court failed to attach documents refuting defendant's position, and postconviction court did not provide additional reasoning as to how

presentation of these witnesses' testimony was immaterial. [Fla. R. Crim. P. 3.850](#).

[2] Criminal Law 🔑 [Remand for amplification of record](#)

Criminal Law 🔑 [Counsel for accused](#)

District Court of Appeal would reverse denial of ground in motion for postconviction relief which alleged that defense counsel should have challenged interview with victim that was admitted into evidence at trial for postconviction court to provide support for its position; postconviction court denied defendant's requested expert testimony, apparently finding that, because interview was determined to be admissible pretrial, defendant was precluded from challenging interview before jury, and postconviction court did not cite any authority for this position. [Fla. R. Crim. P. 3.850](#).

[3] Criminal Law 🔑 [Admissibility of evidence; arrest and search](#)

District Court of Appeal would reverse for further reconsideration postconviction court's denial of ground in motion for postconviction relief which alleged that agent's statement should have been redacted as improper bolstering of victim and irrelevant character evidence; record on appeal indicated that postconviction court concluded without citing to any authority that, because other redactions were made, this additional redaction was legally unnecessary. [Fla. R. Crim. P. 3.850](#).

[4] Criminal Law 🔑 [Counsel for accused](#)

District Court of Appeal would reverse denial of ground in motion for postconviction relief which alleged trial counsel should have called six witnesses identified as defendant's friends and coworkers to testify regarding his reputation in community for truthfulness and remand ground to either be stricken with opportunity to amend or for evidentiary hearing; postconviction court concluded ground was insufficiently pled, which necessarily required it to strike claim

and afford defendant opportunity to amend, and postconviction court also characterized witnesses as “a narrow segment of the community” without any record or legal citation. [Fla. R. Crim. P. 3.850](#).

[5] **Criminal Law** 🔑 Remand for amplification of record

District Court of Appeal would reverse denial of ground in motion for postconviction relief which alleged that defense counsel improperly raised right-to-remain-silent objection to prosecutor's comment about defendant's statement to law enforcement rather than burden-shifting objection so postconviction court could either conduct an evidentiary hearing or for ground to be stricken with defendant afforded an opportunity to amend; trial court failed to attach any records to refute claim. [U.S. Const. Amend. 5](#); [Fla. R. Crim. P. 3.850](#).

[6] **Criminal Law** 🔑 Remand for amplification of record

District Court of Appeal would reverse denial of ground in motion for postconviction relief which alleged trial counsel rendered deficient performance by failing to object to jury taking interview with victim into jury room during deliberations and remand for further consideration; postconviction court, without any record citation, determined ground was mere conjecture and speculation and that defendant did not suffer any prejudice, and postconviction court failed to conclusively refute ground with record attachments and provided no clear reason why ground was insufficiently pled. [U.S. Const. Amend. 6](#); [Fla. R. Crim. P. 3.850](#).

[7] **Criminal Law** 🔑 Remand for amplification of record

Criminal Law 🔑 Counsel for accused

District Court of Appeal would reverse denial of ground in motion for postconviction relief which alleged defense counsel's advice to reject plea offer was ineffective assistance of counsel and

remand for reconsideration; defendant alleged necessary elements for ground, postconviction court failed to attach any records refuting defendant's claim, and reasonability of counsel's advice required evidentiary hearing. [U.S. Const. Amend. 6](#); [Fla. R. Crim. P. 3.850](#).

3.850 Appeal from the Circuit Court for Brevard County. [Charles Grooms Crawford](#), Judge. LT Case No. 2014-CF-022524-A

Attorneys and Law Firms

Laura L. Cepero and [William R. Ponall](#), of Ponall Law, Maitland, for Appellant.

[James Uthmeier](#), Attorney General, Tallahassee, and [Rebecca Rock McGuigan](#), Assistant Attorney General, Daytona Beach, for Appellee.

Opinion

[Wallis, J.](#)

***652** Appellant appeals the summary denial of his [Florida Rule of Criminal Procedure 3.850](#) Motion For Postconviction Relief. We reverse and remand for consideration of all of Appellant's claims.

[1] In ground 1 of his motion, Appellant alleged that two witnesses were available at the time of his trial to challenge the credibility of the victim with prior inconsistent statements that would call into question the reliability of the CPT interview regarding the description and frequency of Appellant's criminal conduct. Although the ***653** trial court found that the victim was impeached during the trial, her credibility was central to this case, making the presentation of these additional witnesses important to Appellant's defense. The trial court failed to attach documents refuting Appellant's position and did not provide additional reasoning as to how the presentation of these witnesses' testimony was immaterial. Therefore, we reverse the denial of ground 1 and order the trial court to attach supporting documentation as well as an explanation of his reasoning for this ruling. *See Terry v. State*, 369 So. 3d 339, 341 (Fla. 5th DCA 2023) (“[W]hen a trial court summarily denies a [rule 3.850](#) claim and fails to attach a copy of portion of the files and records in the case that conclusively shows that the defendant is

not entitled to relief, then the proper remedy is to remand the matter back to the trial court to attach the records that conclusively refute the defendant's claims or to set the matter for an evidentiary hearing.”).

[2] In ground 2 of his motion, Appellant alleged that his attorney should have challenged the CPT interview that was admitted into evidence at trial. Specifically, trial counsel should have called an expert witness that would critique the CPT interviewer's use of interviewing techniques. The postconviction court denied Appellant's requested expert testimony, apparently finding that because the interview was determined to be admissible pretrial, Appellant was precluded from challenging the interview before the jury. The trial court has not cited any authority for this position. We reverse this ground for the trial court to provide support for its position specifically regarding the expert witness. *See id.*

[3] In ground 3 of his motion, Appellant alleged that Agent Stake's statement, “I mean, [S.C.] seems to be a very kind-hearted — and she care [sic] about you and the family very much, and it wasn't a situation where she came forward” should have been redacted as improper bolstering of the victim and irrelevant character evidence. The trial court noted that Appellant's trial counsel had redacted other statements and found that the prejudice of this specific statement was not demonstrated. The record on appeal indicates that the trial court concluded without citing to any authority that because the other redactions were made that this additional redaction was legally unnecessary. We reverse this ground for further reconsideration. *See id.*

[4] In ground 4 of his motion, Appellant alleged that his trial counsel should have called six witnesses that were identified as friends and coworkers to testify regarding his reputation in his community for truthfulness. The trial court concluded that this ground was insufficiently pled due to the omission of certain specifics to determine the admissibility of the proposed reputation evidence. This conclusion necessarily requires the postconviction court to strike this claim and afford Appellant an opportunity to amend. *See Fla. R. Crim. P. 3.850(f)(2); Rish v. State*, 268 So. 3d 233, 234–35 (Fla. 5th DCA 2019). Regarding this issue, the postconviction court also characterized these witnesses as “a narrow segment of the community” without any record or legal citation. We reverse and remand this ground to either be stricken with an opportunity to amend, or for an evidentiary hearing. *See Rish*, 268 So. 3d at 235.

[5] In ground 5 of his motion, Appellant alleged that, following the prosecutor's statement that “[l]adies and gentlemen, a person who is not guilty of that would never have said that statement to law enforcement,” his trial counsel improperly objected that this was an impermissible *654 comment on the right to remain silent. Appellant contends that the proper objection should have been burden-shifting. The trial court failed to attach any records to refute this claim. We reverse for the trial court to either conduct an evidentiary hearing or for this ground to be stricken with Appellant afforded an opportunity to amend. *See id.*

[6] In ground 6 of his motion, Appellant alleged that his trial counsel rendered deficient performance for failing to object to the jury taking the CPT interview into the jury room during deliberations. Appellant cites to *Young v. State*, 645 So. 2d 965 (Fla. 1994), as support for his position. The trial court, without any record citation, determined that this ground was mere conjecture and speculation and that Appellant did not suffer any prejudice. The trial court has failed to conclusively refute this ground with record attachments and provided no clear reason why this ground was insufficiently pled. We reverse and remand this ground for further consideration.

[7] Finally, in ground 7 of his motion, Appellant alleged that his trial counsel's advice to reject a plea offer of five years in prison followed by lifetime registration as a sexual offender was ineffective assistance of counsel because the trial court had already concluded that the victim's child hearsay statements would be admissible at trial. The postconviction court summarily denied this relief concluding that because Appellant did not specify the timeframe within which the plea offer was made, he could not establish whether counsel's advice was reasonable and that just because Appellant failed at trial did not render the advice necessarily unreasonable. Appellant has alleged the necessary elements for this ground. The trial court has failed to attach any records refuting Appellant's claim here. The reasonability of counsel's advice for this ground requires an evidentiary hearing. *See Hipley v. State*, 333 So. 3d 1194, 1196–97 (Fla. 5th DCA 2022) (citing *Perez v. State*, 128 So. 3d 223, 227 (Fla. 2d DCA 2013)). This ground is reversed and remanded for reconsideration.

REVERSED and REMANDED with instructions.

Jay, C.J., and MacIver, J., concur.

All Citations

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