

IN THE SUPREME COURT OF FLORIDA

CASE NO. 88,203

MANUEL VALLE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, STATE OF FLORIDA**

REPLY BRIEF OF APPELLANT

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ARGUMENT I

MR. VALLE WAS DENIED DUE PROCESS AND A FULL AND FAIR HEARING ON HIS MOTION TO VACATE.

The circuit court summarily denied Mr. Valle's Motion to Vacate without attaching any portion of the record to the order. In summarily denying Mr. Valle's motion, the circuit judge refused to accept specific factual allegations as support for Mr. Valle's claims of error. Mr. Valle was entitled to an evidentiary hearing on his claims because the allegations contained in those claims, taken as true, would have entitled Mr. Valle to relief. Moreover, Mr. Valle would have pled his claims with greater specificity had the trial court not forced him to go forward without first allowing him to obtain public records. In addition, the record does not conclusively establish that Mr. Valle is entitled to no relief. Thus, the court's summary denial abrogated Mr. Valle's right to due process and a full and fair hearing on his Motion to Vacate.

The State contends that there was no need to conduct an evidentiary hearing because Mr. Valle's claims were either insufficient, refuted by the record, or procedurally barred. State's Answer at 16.

A. MR. VALLE'S MOTION TO VACATE WAS SUFFICIENTLY PLED AND THE TRIAL COURT ERRED BY NOT ACCEPTING THE FACTUAL ALLEGATIONS CONTAINED WITHIN THE MOTION WHEN CONSIDERING WHETHER A HEARING WAS WARRANTED.

Mr. Valle's claims were sufficiently pled, however, the circuit court refused to accept specific factual allegations as support for the claims. The State fails to address the court's rejection of those allegations as true for the purpose of determining whether an evidentiary hearing was required. Instead, the State asserts that somehow

postconviction counsel was at fault because he declined to give into the court's demand to go forward with the evidence. When questioned by the court as to whether there was a factual basis for Mr. Valle's claims, postconviction counsel informed the court that the allegations had to be accepted as true and witnesses would be produced at an evidentiary hearing to substantiate those allegations stated within the Rule 3.850 motion (PC-R. 56-57; 64-67). The State's assertion that postconviction counsel was required to attach to the Motion to Vacate, or reveal to the court, witness affidavits and proof of the allegations asserted -- before an evidentiary hearing is granted -- is without basis in law.'

Fla. R. Crim. P. 3.850(c)(6) requires only "a brief statement of the facts (and other conditions) relied on in support of the motion." Mr. Valle's motion meets this requirement. Moreover, under Rule 3.850 procedure, the court must treat the allegations as true except to the extent that they are conclusively rebutted by the record. Harich v. State, 484 So.2d 1239, 1241 (Fla. 1986). Thus, a movant is entitled to an evidentiary hearing unless the motion and record conclusively show that the movant is not entitled

¹ In fact, the State's reliance on Zeigler v. State, 452 So.2d 537, 539 (Fla. 1984)(Summary denial of post conviction claims without an evidentiary hearing was proper where, "there was no indication of the availability" of evidence to support the allegations [of ineffective assistance of counsel]), is inapposite. Here, postconviction counsel repeatedly informed the court that witnesses would be called to testify in support of the allegations contained in the Rule 3.850 motion. Thus, there was an "indication of availability" of evidence to support the Rule 3.850 motion. The fact that counsel did not reveal names of specific witnesses is of no consequence as there is no right to general discovery in postconviction and thus no duty to disclose such information. Moreover, the Court in Zeigler remanded the case to the trial court for an evidentiary hearing on the question of judicial bias. That same issue is present in Mr. Valle's case. The Court also remanded the case in Smith v. Dugger, cited by the State, for an evidentiary hearing on the issue of newly discovered evidence.

to relief. Id. at 1240. See also Mills v. State, 559 So.2d 578 (Fla. 1990)("treating the allegations as true except to the extent rebutted by the record, we find that a hearing on this issue is needed."); O'Callaghan v. State, 461 So.2d 1354, 1355 (Fla. 1984).

Mr. Valle's motion contained the elements of a sufficiently pled Rule 3.850 motion. The circuit court's order fails to explain how the claims are insufficient and the degree of specificity in pleading the court apparently used to judge Mr. Valle's claims. A review of the record reveals that the trial court simply refused to accept Mr. Valle's factual allegations. Mr. Valle specifically incorporates herein, those portions of his Initial Brief which illustrate the facts alleged and demonstrate that the record fails to conclusively show that he is not entitled to an evidentiary hearing.

The State also alleges that non-compliance with public records requests did not contribute to the insufficiency of Mr. Valle's motion. State's Answer at 21. Mr. Valle suggests that his motion was legally sufficient, however, the failure of state agencies to disclose requested records impeded his ability to fully plead Claims II, VIII, XI, XV, XVI, VII, VIII, XIX and XX. Although Mr. Valle's claims meet the requirements of a Rule 3.850 motion, Mr. Valle was unable to plead the claims with the particularity required under the circuit court's unique standards. If Mr. Valle had access to the requested public records, he would have been able to satisfy the circuit court's "intellectual jerking around" standard (PC-R. 13).

In particular, Mr. Valle's Brady claim, Claim XVI, has been impaired by state action. This situation is similar to Engle v. Dugger, 576 So.2d 696 (Fla. 1991), wherein this Court granted relief under chapter 119, Florida Statutes. Notably, the State relies

on Engle for the proposition that an evidentiary hearing is not required but omits this Court's ultimate conclusion that Engle was entitled to withheld records and an opportunity to file a new Rule 3.850 motion upon disclosure of such records.

In Engle, as in the instant case, the motion to vacate included a claim based on the state's withholding of material and exculpatory evidence. Engle v. Dugger, 576 So.2d at 699. The claim was predicated upon the refusal of state agencies to comply with a request for disclosure of records pertaining to Engle's prosecution. Id. This Court affirmed the circuit court order summarily denying the motion to vacate but held:

The two-year time limitation of Florida Rule of Criminal Procedure 3.850 shall be extended for sixty days from the date of such disclosure solely for the purpose of providing Engle with the opportunity to file a new motion for postconviction relief predicated upon any claims under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d (1963), arising from the disclosure of such files. In this manner, Engle will be placed in the same position as he would have been if the files had been disclosed when they were first requested.

Engle v. Dugger, 576 So.2d at 704. See also Ventura v. State, 673 So.2d 479 (Fla. 1996); Hoffman v. State, 613 So.2d 405 (Fla. 1992); Jennings v. State, 583 So.2d 316 (Fla. 1991); Provenzano v. Dugger, 561 So.2d 405 (Fla. 1990). Likewise, Mr. Valle should be afforded the same relief with respect to his Brady claim.

The State disingenuously argues that because Mr. Valle voluntarily dismissed the civil suit against FDLE, his outstanding public records requests have no impact on the current proceeding. State's Answer at 22. What the State fails to note, in making this argument, is that Mr. Valle voluntarily dismissed the civil suit upon the promulgation of Fla. R. Crim. P. 3.852. Rule 3.852 superseded Hoffman suits. In Re Amendment to

Florida Rules of Criminal Procedure -- Capital Postconviction Public Records Production, 683 So.2d 475 (Fla. 1996). The promulgation of Rule 3.852 required “that any pending public records civil actions that seek public records to be used in 3.850 or 3.851 proceedings be transferred . . . to the postconviction court.” Id. at 476. Therefore, the fact that Mr. Valle dismissed the civil suit is of no consequence to the importance of his outstanding public records requests.

Thus, because the circuit court failed to accept the factual allegations in the instant Rule 3.850 motion as true when evaluating whether a hearing should be granted and because state agencies have failed to comply with Mr. Valle’s public records requests thus denying Mr. Valle the opportunity to more fully plead his claims, relief is warranted. The circuit court’s summary denial of Mr. Valle’s Rule 3.850 motion on the basis of insufficiency should be reversed and remanded for an evidentiary hearing.

B. THE CIRCUIT COURT FAILED TO ATTACH THOSE PORTIONS OF THE RECORD WHICH CONCLUSIVELY DEMONSTRATE THAT MR. VALLE IS ENTITLED TO NO RELIEF.

A trial court has only two options when presented with an initial Rule 3.850 motion: either grant an evidentiary hearing, or alternatively, attach to any order denying relief adequate portions of the record affirmatively demonstrating that appellant is not entitled to relief on the claims asserted. Witherspoon v. State, 590 So.2d 1138 (4th DCA 1992); see also Roberts v. State, 678 So.2d 1232, 1236 (Fla. 1996); Brown v. State, 596 So.2d 1026, 1028 (Fla. 1992); Hoffman v. State, 571 So.2d 449, 450 (Fla. 1990); Fla. R. Crim. P. 3.850(d).

Upon summary denial of a Rule 3.850 motion, Rule 3.850(d) requires the circuit court to attach portions of the record conclusively establishing that appellant is not entitled to relief. In Mr. Valle's case, the circuit court failed to attach portions of the record to its order which summarily denied the Rule 3.850 motion. The State suggests that because the entire record is before this Court, Rule 3.850(d) has been satisfied. State's Answer at 22. This argument has been repeatedly rejected by the courts of this state:

The state argued that the entire record is attached to the order in the Court file before us, thus fulfilling this requirement. However, such a construction of the rule would render its language meaningless. The record is attached to every case before this Court. Some greater degree of specificity is required. Specifically, unless the trial court's order states a rationale based on the record, the court is required to attach those specific parts of the record that directly refute each claim raised.

We thus have no choice but to reverse the order under review and remand for a full hearing conforming to rule 3.850.

Hoffman v. State, 571 So.2d 449, 450 (Fla. 1990); see also Lemon v. State, 498 So.2d 923 (Fla. 1986).

The growing practice of incorporating state responses into orders denying postconviction motions is not [a] substitute for the record attachments necessary in many cases for the trial courts to be affirmed. If trial judges want prosecutors to play a meaningful role in the summary denial of postconviction motions, they should direct the state to assemble the record which refutes a claim, and attach these documents to its responses.

Brown v. State, 689 So.2d 1287 (Fla. 1st DCA 1997) quoting Flores v. State, 662 So.2d 1350, 1352 (Fla. 2d DCA 1995). Thus, the circuit court's failure to attach portions of the

record to its order violates Rule 3.850 procedure and requires reversal and remand for an evidentiary hearing.

Moreover, the State's reliance on Mills v. State, 684 So.2d 801, 804 (Fla. 1996) is misplaced. The Mills decision is a very narrow ruling, limited in its scope, to the affirmance of a summary denial where the trial court based its order on a procedural bar. Mills is procedurally and factually distinguishable from the instant case. In Mills, the circuit court was considering a successive Rule 3.850 motion. Mills v. State, 684 So.2d at 804. Successive Rule 3.850 motions are also governed by Rule 3.850(f) which allows a trial court to dismiss such a petition on grounds other than 3.850(d). See Id. In the instant case, the motion before the court is Mr. Valle's original Rule 3.850 motion. Thus, 3.850(d), which is dependent on the record showing no entitlement to relief, (and its exception, discussed infra), governs exclusively the means in which the circuit court could summarily deny the motion on the grounds of insufficiency.

Second, in Mills, the circuit court summarily dismissed the four claims in the Rule 3.850 motion on procedural bar grounds. Thus, there was no need for record attachments demonstrating why the appellant is not entitled to relief. Here, Mr. Valle's Rule 3.850 motion contained twenty claims which were summarily denied on three separate grounds. However, the circuit court failed to attach portions of the record which established insufficiency or refuted the factual allegations as required by 3.850(d).

When a trial court is presented with a Rule 3.850 motion, it may deny claims based upon either: sufficiency of the motion on its face, i.e. facial validity; legal sufficiency of the pleading; record facts that rebut the appellant's allegations, or;

procedural bars. Where the “order of denial [is] based on the insufficiency of the motion or on the face of the record, [the] trial court[must] set forth specifically the basis of the court’s ruling with sufficient specificity to delineate the issue for the benefit of the appellate courts.” Committee Notes to 1977 Amendment to Rule 3.850. Such a showing is satisfied by attaching portions of the record relied upon in rendering the order. Id.; Rule 3.850(d). The reason for the 3.850(d) record attachment requirement is to insure adequate appellate review of the trial court’s reliance on the motion, files, and record in denying an appellant’s factual allegations.

In contrast to summary denial rulings under 3.850(d) are rulings under 3.850(c). Where the ground for summary denial is insufficiency of the motion on its face, i.e., the motion does not comply with the requirements of 3.850(c), the motion should nevertheless be ruled on and if denied, no records need be attached. Rule 3.850(d); see also Committee Notes to 1984 Amendment (“The committee felt that even if a motion filed under rule 3.850 does not substantially comply with the requirements of the rule, the motion should still be filed and ruled on by the court. Hence the former provision authorizing the court to refuse to receive such a nonconforming motion has been removed and words allowing the presiding judge to summarily deny a noncomplying motion have been satisfied.”). The reason for this is obvious. A denial based on a defect in the form of the motion does not need to be, and indeed cannot be, explained by record attachments.

Likewise, where the order of denial is based on procedural bar grounds, this Court has determined that no records need be attached. Mills v. State. Indeed, a plain

reading of Rule 3.850 dictates such a result. 3.850(c) states that the “rule does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal...”. In other words, if a claim is procedurally barred, the claim is insufficient on its face to provide relief. As with other facial defects under 3.850(c), 3.850(d) provides an exception from the requirement that records need be attached to the order. Rule 3.850(d)(“In those instances when the denial is not predicated on the legal insufficiency of the motion on its face, a copy of that portion of the files and records...shall be attached to the order.”).

Thus, Mills illustrates a narrow exception (dismissal grounds under 3.850(c)) to the rule contained in 3.850(d). This exception applies only where a circuit court summarily denies a Rule 3.850 motion on procedural bar grounds or the motion contains a facial defect. To hold otherwise, would allow the exception to swallow the rule and render the 3.850(d) record attachment requirement meaningless.

Here, the circuit court summarily denied Mr. Valle’s claims without attaching portions of the record which conclusively establish that he was not entitled to relief. Thus, because the circuit court ignored the procedures mandated by Rule 3.850 and failed to specifically delineate its reasons for summary denial, this Court cannot engage in an adequate review of the lower court’s **decision**.² This Court should reverse and

² Moreover, appellant cannot adequately address the circuit court’s order because there is no way to conclusively know why the court found the motion to vacate insufficient to afford relief. Undersigned counsel is unable to reconcile the degree of specificity in pleading apparently used by the circuit court with that used in many of counsel’s other cases in which evidentiary hearings were granted.

remand this case to the circuit court for an evidentiary hearing on Mr. Valle's Motion to Vacate.

ARGUMENT II

THE TRIAL COURT IMPROPERLY REFUSED TO ALLOW MR. VALLE A REASONABLE AMOUNT OF TIME IN WHICH TO PURSUE CIVIL ACTIONS PURSUANT TO HOFFMAN. THE TRIAL COURT ALSO ERRED IN NOT REQUIRING THE DADE COUNTY STATE ATTORNEY TO PROVIDE A LIST OF EXEMPTIONS AS REQUIRED UNDER CHAPTER 119 OF THE FLORIDA STATUTES. THE TRIAL COURT ALSO ERRED IN DISMISSING MANY OF MR. VALLE'S CLAIMS WITHOUT ALLOWING HIM TO AMEND HIS MOTION AFTER OBTAINING ALL PUBLIC RECORDS.

The circuit court erred by denying Mr. Valle his right to pursue public records litigation pursuant to Chapter 119 of the Florida Statutes, article I, section 24 of the Florida Constitution, Hoffman v. State, 613 So.2d 405 (Fla. 1992) and newly enacted Florida Rule of Criminal Procedure 3.852. It is the action of the circuit court's erroneous rulings and state agencies' unlawful withholding of public records that continue to impede Mr. Valle's ability to fully plead his Rule 3.850 motions.

A. FAILURE TO ALLOW MR. VALLE TO PURSUE PUBLIC RECORDS LITIGATION.

The State does not dispute the fact that the circuit court denied Mr. Valle the time to pursue outstanding public records requests and subsequently amend his Motion to Vacate. Instead, the State argues that evidence of noncompliance with public records requests was not presented to the circuit court or to this Court. State's Answer at 29. This argument must fail. There is a longstanding non-record history of agency noncompliance with Mr. Valle's records requests however, the circuit court summarily

denied Mr. Valle's requests for a hearing on this issue. Had Mr. Valle been afforded a fair hearing on his public records claims, he would have presented such evidence to the circuit court. Despite being denied such a hearing, Mr. Valle has repeatedly pled that state agencies which failed to disclose public records impeded his ability to fully plead his Motion to Vacate. Additionally, the State should not be heard to complain that Mr. Valle has not presented record evidence to this Court when it has prevented Mr. Valle from putting such evidence on the record. Mr. Valle is entitled to a hearing so he can establish this claim on the record for appellate review.

To date, Mr. Valle has yet to receive public records including, but not limited to, the Florida Department of Law Enforcement's investigative file, the "I-A" file and public records located in the storage room of the Florida State Prison. Unless and until state agencies disclose the requested public records, Mr. Valle cannot fully plead his Motion to Vacate. Mr. Valle is entitled to a hearing so he can establish this claim on the record for appellate review. Thereafter, relief is appropriate.

B. FAILURE TO REQUIRE LIST OF EXEMPTIONS.

The circuit court failed to direct the Dade County State Attorney's Office to provide Mr. Valle with a list of the documents it claimed to be exempt from Chapter 119 records production, as required by Fla. Stat. 119.07(2)(a). Thus, Mr. Valle was deprived of the opportunity to be heard as to why such records were not exempt. Jennings v. State, 583 So.2d 316 (Fla. 1991).

The State does not contest the fact that a list of documents claimed as exempt was never provided to Mr. Valle. Instead, the State argues that the claimed exemptions

are not public records at all, so there is no duty to furnish such a list. State's Answer at 31. Contrary to the State's assertion, work product is subject to Chapter 119 disclosure.

The State Attorney's Office claimed as exempt documents consisting of "personal notes or other work product..." State's Answer at 24. That some document is claimed to be a personal note may be immaterial. See Florida Sugar Can League v. Florida Department of Environmental Regulation, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992); Inf. Op. Att'y Gen. Fla. to Michael S. Davis, March 16, 1992. In State v. Kokal, 652 So.2d 327 (Fla. 1990), this Court held that the state attorney could not claim a work product exemption to Chapter 119 disclosure. This is so because the work product exemption expires at the "conclusion of the litigation", i.e., when a conviction and sentence have become final, Id. at 324; see generally City of Orlando v. Desiardins, 493 So.2d 1027 (Fla. 1986); State v. Coca-Cola Bottling Co. of Miami, Inc., 468 So.2d 218 (Fla. 1985). Thus, there is no valid "state attorney work product" exemption for disclosure of public records during postconviction proceedings. Id.; see also Roberts v. Butter-worth, 668 So.2d 580 (Fla. 1996); Anderson v. State, 627 So.2d 1170 (Fla. 1993); Provenzano v. Dugger, 561 So.2d 541 (Fla. 1990). The circuit court's ruling to the contrary was clearly erroneous. Mr. **Valle** is entitled to an opportunity to be heard as to why the work product of the Dade County State Attorney's **Office** is not exempt. See Walton v. Duooer, 634 So.2d 1059, 1062 (Fla. 1993); State v. Kokal, 652 So.2d 324 (Fla. 1990).

This matter should be remanded to the circuit court with instructions to complete the Chapter 119 process and to allow Mr. Valle a reasonable amount of time following the receipt of public records to amend his Motion to Vacate.

C. FAILURE TO ALLOW MR. VALLE TO AMEND HIS MOTION.

Mr. Valle should have been permitted to secure Chapter 119 compliance and subsequently amend his Motion to Vacate. Mr. Valle's case is similarly situated to the cases of Ventura v. State, 673 So.2d 479 (Fla. 1996); Jennings v. State, 583 So.2d 316 (Fla. 1991); Engle v. Dugger, 576 So.2d 696 (Fla. 1991); Provenzano v. Dugger, 561 So.2d 541 (Fla. 1991). In those cases, this Court extended the time period for filing Rule 3.850 motions after disclosure of Chapter 119 materials. The fact that the circuit court has denied Mr. Valle a hearing to establish agency non-compliance does not dictate a different result. Instead, it demands the conclusion that Mr. Valle is entitled to such a hearing on this issue. This Court should remand Mr. Valle's case to the circuit court so that Mr. Valle may obtain those public records still outstanding and, within a reasonable amount of time thereafter, amend his postconviction motion.

ARGUMENT III

MR. VALLE WAS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL.

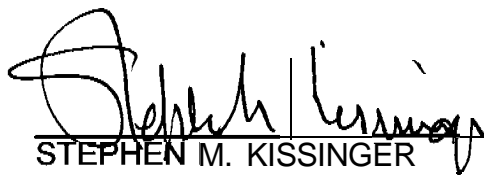
As with all other claims raised in the instant petition, the record does not conclusively refute the allegations raised in the ineffective assistance of counsel claims. Mr. Valle sufficiently pled his ineffective assistance of counsel claims and such claims are cognizable in a Rule 3.850 motion. Counsel's failures cannot be deemed reasonable

or harmless without an evidentiary hearing. Fugate v. State, 691 So.2d 53, 54 (Fla. 4th DCA 1997); Reid v. State, 682 So.2d 194 (Fla. 4th DCA 1996)(summary denial of ineffective assistance of counsel remanded for attachment of portions of record showing no relief or for evidentiary hearing). Mr. Valle was entitled to an evidentiary hearing on his claims of ineffective assistance of counsel and thereafter relief. Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based on the record and arguments presented herein, Mr. Valle respectfully urges the Court to reverse the lower court's order, order a full evidentiary hearing, and vacate his unconstitutional convictions and sentences, or, in the alternative, to reverse the lower court's order, to order an evidentiary hearing on Mr. Valle's Chapter 119 Claim, and allow Mr. Valle a period of 60 days after the receipt of all public records to which he is entitled to amend his Rule 3.850 motion.

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief has been furnished by United States Mail, first class postage prepaid, to all counsel of record on July 30, 1997.



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