IN THE DISTRICT COURT OF APPEAL
FOR THE FIFTH DISTRICT
STATE OF FLORIDA

CHEYANNE CHRISTINA WOODS,

Defendant-Appellant, **CASE NO.: 5D16-1486**

v.

STATE OF FLORIDA,

Appellee.
_____/

On Appeal To The Fifth District Court Of Appeal From The
Circuit Court of the Ninth Judicial Circuit
In And For Orange County, Florida

APPELLANT'S INITIAL BRIEF

Jennifer M. Manyen, Esq.
Halscott Megaro, P.A.
33 East Robinson Street, Suite 220
Orlando, Florida 32801
Telephone: 407-255-2165
Facsimile: 855-224-1671
jmanyen@halscottmegaro.com
Florida Bar ID # 0112073
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

PRELIMINARY STATEMENT

The Appellant, CHEYANNE CHRISTINA WOODS, by and through the undersigned counsel and pursuant to Rule 9.141(b)(2) of the Florida Rules of Appellate Procedure, hereby appeals the summary denial of her motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850.

This Court has jurisdiction over the instant appeal pursuant to Florida Rule of Appellate Procedure 9.141(b)(2). Venue is proper in this Court pursuant to Section 35.043 of the Florida Statutes, as the Fifth District Court of Appeal maintains supervisory jurisdiction over the Ninth Judicial Circuit. Finally, the notice of appeal in this case was timely filed, pursuant to Fla. R. App. P. 9.110(b), Fla. R. App. P. 9.110(d), and Fla. R. App. P. 9.140(b)(1).

STATEMENT OF THE CASE AND FACTS

A. Procedural History

Appellant was arrested on June 19, 2012 and ultimately indicted on August 21, 2012 with one count of First Degree Murder (With a Firearm) in violation of Florida Statutes §§ 782.04(1) and 775.087; one count of Burglary of a Dwelling with an Assault or a Battery (With a Firearm) in violation of Florida Statutes §§ 810.02(1)(b)1, 810.02(2)(a), 775.087(1) and 775.087(2); and, one count of Robbery with a Firearm in violation of Florida Statutes §§ 812.13(2)(a) and 775.087(2)(a)(3). On November 6, 2012, at the direction of trial counsel, Appellant withdrew her

initial plea of not guilty and pleaded guilty to one count of Robbery with a Firearm pursuant to a plea agreement with the State. Appellant was sentenced on April 28, 2014 to twenty (20) years of incarceration. On May 9, 2014, Appellant filed a motion for reconsideration of her sentence pursuant to Florida Rule of Criminal Procedure 3.800(1), which was denied without a hearing. Appellant appealed to the Fifth District Court of Appeals on October 28, 2014, which per curiam affirmed her conviction on March 10, 2015.

On March 9, 2015, Appellant filed a motion for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.850. The trial court summarily denied the motion on March 23, 2016.

This appeal follows.

B. Underlying Facts

Date of the Incident

On June 15, 2012, Orlando Police officers responded to a shooting. (R. p. 2). Upon arrival, officers found a neighbor, Shawn Delifus, and Wilson George, performing cardiopulmonary resuscitation (CPR) on Berson Michel, who was pronounced dead at the scene. Id. George reported that he, Dieulovson Jeune, and Michel were inside the apartment with three females, when four to five males, armed with handguns, entered the apartment with the intent to rob them. Id. George, Michel, and Jeune were struck in the face with firearms, and Michel was shot. Id.

George stated that Michel had advised him and Jeune that he knew some girls that wanted to "hang out." (R. p. 27). Michel went and picked up the girls and brought them back to the apartment. (R. pp. 2-3). George did not know any of the girls and did not recall hearing their names. (R. p. 3). The girls offered to give them massages, and instructed the men to strip down to their underwear and lie on the bed, which they did. Id. Prior to the robbery, the girls took turns entering the bathroom, and at one point, all three went into the bathroom together. Id. George suspected that the girls were going into the bathroom to call the males that then came in to rob them. Id. His suspicions were further aroused by the fact that the armed men did not order the females to get on the floor and did not touch the females. Id. Also, the females did not flee the apartment, even though they had an opportunity to do so. George's laptop was stolen in the robbery. Id.

Through the police investigation, the girls present during the robbery were eventually identified through Twitter as Yasmine McIntyre, Appellant, and Chaquida Nicole Roosevelt. Id. Since Appellant nor McIntyre had a criminal history or identification, their Twitter photos were used in the sequential line-up. Id. George was unable to identify either Appellant or McIntyre, but Juene, confirmed Appellant and McIntyre were at the apartment prior to the robbery. Id. Phone records revealed several text messages and phone calls between Appellant and Michel in the hours leading up to his death. Id. Further, several text messages

between the various co-defendants sent immediately before the robbery, revealed that all three girls were communicating with the male co-defendants to advise how many people were present, what the they were doing, what items they had identified to be stolen in the robbery, and when the male co-defendants should enter the apartment. (R. pp. 26-43).

Police Interview

When first interviewed by police, Appellant admitted to being in the apartment at the time of the robbery, but denied participating in the robbery or the planning thereof, and denied knowing the men who participated in the robbery. (R. p. 3). She admitted that she had arranged for herself and the other two girls to dance for Michel at his apartment. (R. pp. 3-4). Appellant confirmed that one of the girls with her was her friend Yasmine McIntyre, she claimed that she knew the other girl only as a friend of Yasmine named "Nicoletta." (R. p. 29).

After approximately forty-five minutes, Appellant asked to speak with an attorney and her family. (R. p. 4). Appellant's mother and father arrived at the police station, and were advised by Detective Michael Moreschi that Appellant was being charged with first degree murder. Id. Detective Moreschi told Appellant's mother, Barbara Saunders, that Appellant had requested an attorney, but would give her and Marvin Woods, Appellant's father the opportunity to convince Appellant to cooperate first. This was predicated on the conversation not being monitored. Id.

While Appellant was speaking with her parents, McIntyre also denied she knew a robbery would take place, but did know the men involved in the robbery. Id. She also identified the girl that was with her and Appellant during the robbery as "Quida," which was one of Appellant's best friends. (R. p. 31).

Detective Moreschi returned to Appellant's interrogation room and ended the conversation with her parents. (R. p. 4). Prior to them leaving the police station, Detective Moreschi asked Appellant's mother to ask Appellant for information about Quida's identity. Id. Despite the fact Detective Moreschi conveyed Appellant's conversation with her parents would not be monitored, per Orlando Police Department policy, "all prisoners must be constantly monitored from a remote video room when left alone." (R. p. 32). Officer Brent Fellows was monitoring Appellant's interrogation room while she was speaking with her parents, and later stated that Appellant attempted to convey a message to co-defendant Jamal Jackson, by asking her mother to have "K.K." call Jackson and tell him "to stay away." (R. p. 33)

A young woman name Curiosity Johnson, who identified herself as a friend of Roosevelt, McIntyre, and Appellant, but who was not involved in the robbery and murder, told police that Woods and some of her co-defendants had formed a gang, calling themselves "Young Nigga Black Mask." (R. p. 35). "The girls," would make money by "trickin" or dancing naked for men in their homes. Id. Johnson told police

that she had heard Appellant talk many times about setting someone up to be robbed, but was not aware of any previous incidents. (R. p. 5).

After Roosevelt was arrested, she agreed to talk to police. Id. She stated she had only known McIntyre and Appellant for approximately three weeks. Id. When asked how the incident started, Roosevelt advised that "Cheyanne needed money," so she called Michel for work. (R. p. 38). Roosevelt stated that Appellant was the one who "set everything up" and that Appellant told Jackson about having seen Michel with large amounts of money in the past. Id. Roosevelt admitted that the robbery plan had been discussed in her presence and that she knew it was going to occur, but said that nobody was supposed to get killed. (R. p. 5). She never heard any discussion of guns and advised that the original plan was for Appellant to spray Michel with mace in order to temporarily disable him so that "the guys" could come in and rob him. (R. p. 38). During the getaway after the robbery and murder, Roosevelt heard Manuel Rey exclaim, "We killed him." Id.

Plea Hearing

On November 6, 2012, Appellant entered into a Plea and Sentencing Agreement with the State, whereby she agreed to testify truthfully against her co-defendants in exchange for the State entering a nolle prosequi of the first degree murder and burglary with an assault or battery counts. (R. p. 5). Appellant agreed to enter a guilty plea to Robbery with a Firearm. Id. The agreement called for a

maximum sentence of twenty-seven (27) years of incarceration and twenty-five (25) years of probation. (R. pp. 5-6). Otherwise, there was no agreed upon sentence. (R. p. 6). The agreement recognized that Appellant could ask the Court to impose a youthful offender or downward departure sentence, but that the Court was not obligated to impose such a sentence. Id. The score sheet reflected a lowest permissible sentence of 138.3 months, and a maximum sentence of life imprisonment. Id.

During the plea hearing, Appellant admitted that, while the statement that she gave to the prosecutor and Detective Moreschi on August 1, 2012, was mostly true, she had misrepresented McIntyre's involvement in the crime. Id. During the plea hearing, Appellant stated that McIntyre was involved in the planning and set-up of the robbery. (R. pp. 45-56).

Sentencing Hearing

A sentencing hearing was conducted on April 28, 2014. (R. p. 6). Appellant's mother, Barbara Saunders, testified that Appellant had been raised by her and Appellant's father, Marvin Woods. Id. Saunders and Woods had been together for twenty-two (22) years. Id. Saunders stated that, prior to the spring of 2012, Appellant had been an "A" student and on the flag team at her high school, but that her behavior had begun to change. (R. p. 63). This change in behavior "came out of left field." (R. p. 64). Saunders also testified that while incarcerated, Appellant

had earned her high school diploma, and was interested in continuing her schooling. She explained that Appellant had not been raised with any exposure to criminal life. (R. p. 6).

Marvin Woods, Appellant's father, testified that Appellant had an older sibling who lived outside the home, and two younger siblings who were still at home. Id. Prior to June 2012, Appellant had started acting out and expressing that she wanted more freedom to go out with her friends instead of babysitting her younger siblings. At one point, Appellant ran away from home. Id. Marvin Woods expressed that he could not believe it when Appellant was arrested because the things she was accused of doing were way out of character for her, and she did not know anything about "the street life." (R. p. 73). Marvin Woods expressed that Appellant had been a good kid who fell into the wrong hands. (R. p. 7).

The lead detective, Michael Moreschi, also testified on Appellant's behalf. Id. He stated that after being arrested, Appellant gave him some information, but during the interrogation she invoked her right to counsel. Id. Later she met with him in the presence of her attorney and the State, and gave Detective Moreschi more information that was valuable to the investigation. Id. Detective Moreschi stated that he believed Appellant had been honest and up-front with him during the interview conducted at the Orange County Jail. Id. Detective Moreschi also expressed that he had observed real remorse from Appellant during the sentencing

hearing. Id. Further, he could not understand how the three female co-defendants had gone from being honor students to being in their current situation, but he felt all three had redeeming qualities and would later contribute something to society. Id. When asked by plea counsel whether Appellant was the first person to "give a proffer" in the case, Detective Moreschi responded that McIntyre was arrested the same night as Appellant, and was very upfront and honest. (R. p. 78).

Detective Moreschi continued,

> And even though Cheyanne wasn't, and I gave her -- I gave her a little more of the responsibility in this case because I felt like if there -- if any of the other five would have dropped out, this thing would have kept going, but if she had, this would have not happened.
> I understand -- and **you were here, Judge** -- and from Mr. Altman, that she -- **when she sat here during the trial for the people that are fully responsible for killing Berson Michel, that she did the right thing, and I'm proud of her for that.**

(R. p. 79) (emphasis added).

Appellant then called her aunt, Angela Saunders, to testify on her behalf. (R. p. 7). Angela Saunders advised that Appellant had been a great kid growing up, and was a good student. Id. She further advised that Appellant's actions were out of character for her. Id.

Lastly, Appellant gave the Court a letter written on her behalf by a corrections officer named Angela Williams. (R. p. 8). The State did not present any witnesses. Id.

The Court took notice of the Pre-Disposition Report prepared in advance of the sentencing. Id. The State explained to the Court that it had agreed to cap Appellant's maximum sentence at twenty-seven (27) years, which was two years more than the twenty-five (25) year cap agreed upon for McIntyre and Roosevelt, because Appellant was not initially truthful with the police. Id. The State then informed the Court that Appellant "came off of" her story that she knew nothing about the robbery or the male co-defendants "pretty quickly," and gave a proffer. (R. p. 85). The prosecutor further stated that the three female co-defendants seemed like "very nice young women" and that it would surprise him if they were involved in something like this again. (R. p. 85-86). The State continued,

> I don't think any of them knew that anything like this would come of this. They did know that Manny and Jamal had guns and carried guns with them a lot.
> I don't think any of them expected any -- anything; you know, any murder or any violence like this to happen, although perhaps that was foreseeable.
> As I said, they all were very cooperative once they -- very quickly, they testified at deposition. They told the truth at trial. They all said -- they all agreed to take polygraphs, although we didn't -- we didn't go to the trouble of doing that because it did seem that they were entirely honest.
> I don't believe this -- anything like this had happened before, that it was just the first time.

(R. p. 86).

Trial counsel argued that Appellant was an upstanding, bright, attractive honor roll student prior to the crime, which occurred shortly after her seventeenth birthday. (R. p. 8). He further stated that Appellant ran away from home because she felt that the rules being imposed on her were too strict, and was attracted to a lifestyle of not having anywhere to live, hanging out with boys, drinking, and smoking. (R. p. 8-9). He argued that this was due to Appelant's youth and her inability, as a young person, to make wise decisions. (R. p. 9).

Although there was a plan to rob Michel, there was no plan to hurt anyone, but it was foreseeable. Id. Trial counsel admitted that Appellant was not forthcoming with the police initially, but pointed out that, after retaining him, she wanted to cooperate with the police, and he believed that she was the first to do that. Id. Appellant also fulfilled the terms of her plea agreement, giving truthful testimony and depositions. Id. Finally, trial counsel argued that Appellant had been bettering herself while incarcerated the past two years at the county jail, obtaining her high school diploma, participating in counseling, and peer-counseling other inmates. Id. He asked the Court to consider a youthful offender sentence and release Appellant on community control to prove she can be a productive member of society. Id.

Appellant addressed the Court on her own behalf, apologizing to Michel's family and telling the Court that she intended to continue to better herself and try to positively influence others. Id.

The Court sentenced Appellant to twenty (20) years in prison, pointing out that, although Appellant had done all she could to make the best of a bad situation, the reality was that the crime would not have occurred but for her, because Appellant was the one who planned it. Id. Trial counsel objected to the sentence, at which point the Court asked the attorneys to approach.

At a sidebar, the judge explained that she had listened to the trial of the male co-defendants, and that she had listened to the arguments made at sentencing, but that a person had died. Id. The judge recognized that the Pre-Disposition Report recommended youthful offender sanctions, but stated that she disagreed with trial counsel as to the appropriate sentence. (R. pp. 58-101).

Motion for Reconsideration

On May 9, 2014, Appellant filed a motion for reconsideration of her sentence pursuant to Florida Rule of Criminal Procedure 3.800(1). (R. p. 10). Appellant argued that the trial court was not legally justified sentencing her to twenty (20) years in the Florida Department of Corrections when no party made such a recommendation, Appellant cooperated with law enforcement and the Office of the State Attorney in the prosecution of the co-defendants, and some of those same co-

defendants with the same or greater culpability were given lesser sentences. Id. The sentence was in violation of the Eighth Amendment to the United States Constitution as disproportionate, and should be reviewed pursuant to the objective factors of the Amendment's prohibition against cruel and unusual punishment. (R. pp. 103-107). Appellant's motion was denied without a hearing on June 4, 2014. (R. p. 10).

Direct Appeal

On October 28, 2014, Appellant prosecuted an appeal to the Fifth District Court of Appeal, case number 5D14-2321. Id. Appellant argued the same points as argued in her Motion to Reconsider and that the trial court erred in denying her Motion to Reconsider without a hearing, when it granted the same hearing to a co-defendant, and reduced her sentence. Id. The District Court of Appeal per curiam affirmed Appellant's judgment and conviction on March 10, 2015. Id.

SUMMARY OF THE ARGUMENT

Appellant filed a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850 alleging that she received ineffective assistance of counsel at trial and her plea was invalid. The trial court summarily denied the motion without holding an evidentiary hearing and without requiring Appellant's trial counsel to file an affidavit to refute the allegations. In denying the motion, the trial court erroneously applied the standard for determining whether a plea was voluntarily and knowingly entered to Appellant's ineffective assistance of counsel claim.

Moreover, the trial court was required to hold an evidentiary hearing to determine the validity of Appellant's claims of ineffective assistance of counsel. The record does not conclusively refute the claims as the claims are largely based on private discussions between Appellant and trial counsel. As such, the trial court should be ordered to hold an evidentiary hearing on the matter.

Appellant's claim that her plea was invalid as it was entered in violation of the constitution was erroneously denied summarily. Appellant alleged that she was advised that she would receive a maximum of ten (10) years' incarceration based on her cooperation. The only reason she pled guilty was based on trial counsel affirmative misadvice. Even though the record reflects that Appellant told the trial court that she understood the consequences of her plea, she had not fulfilled her requirements of cooperation, which was the basis of trial counsel's misadvice that after her fulfillment her maximum sentence would be no more than ten (10) years' incarceration. Therefore, a hearing should have been held to determine if trial counsel had properly advised Appellant of the direct consequences of her plea and her maximum sentencing exposure.

ARGUMENT

POINT I- APPELLANT'S MOTION FOR POST-CONVICTION RELIEF WAS ERRONEOUSLY DENIED WITHOUT AN EVIDENTIARY HEARING WHERE THE CLAIMS WERE NOT CONCLUSIVELY REFUTED BY THE RECORD

A. Standard of Review

When a trial court denies a motion for post-conviction relief without an evidentiary hearing, Florida Rule of Appellate Procedure 9.141 sets the standard for review as follows: "[u]nless the record shows conclusively that the appellant is entitled to no relief, the order shall be reversed and the cause remanded for an evidentiary hearing or other appropriate relief." Fla. R. App. P. 9.141.

In McLin v. State, the Florida Supreme Court explained, when reviewing the summary denial of a motion for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.850, an appellate court should overturn the trial court's denial when the appellant's claims are either facially valid or not conclusively refuted by the record. 827 So.2d 948, 954 (Fla. 2002).

Florida courts have also held, when a trial court summarily denies a claim made pursuant to Rule 3.850, the trial court must "either state its rationale in its decision or attach those specific parts of the record that refute each claim presented in the motion." Id. (citing Anderson v. State, 627 So.2d 1170, 1171 (Fla. 1993)). Specifically, "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 should be attached to the order." McLin, 827 So.2d at 954 (citing Fla. R. Crim. P. 3.850(d)). Indeed, the trial court's order must demonstrate the "motion, files and records in the case conclusively show that the movant is entitled to no relief." Id.

B. Argument on the Merits

1. Appellant's Claim of Ineffective Assistance of Counsel

As a general principle, to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was deficient and (2) there is a reasonable probability that the outcome of the proceeding would have been different had counsel not been deficient. See Torres-Arboleda v. Dugger, 636 So.2d 1321, 1324 (Fla. 1994) (construing Strickland v. Washington, 466 U.S. 668, 687, 694 (1984)). Thus, there is a two-part inquiry: counsel's performance and prejudice.

> In reviewing counsel's performance, the court must be highly deferential to counsel, and in assessing the performance, every effort must "be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."

Spencer v. State, 842 So.2d 52, 61 (Fla. 2003) (quoting Strickland, 466 U.S. at 689).

The defendant bears the burden of showing that counsel's errors were "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant

by the Sixth Amendment." Strickland, 466 U.S. at 687. Furthermore, a defendant must overcome the strong "presumption that counsel has rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment…" Blanco v. Wainwright, 507 So.2d 1377, 1381 (Fla. 1987) (quoting Bertolotti v. State, 534 So.2d 386, 387 (Fla. 1988)).

In addition to showing counsel's deficient performance, a defendant must also meet the prejudice prong of the Strickland test. For this point, a defendant must demonstrate that there is a "reasonable probability that, but for the deficiency, the result of the proceeding would have been different." Spencer, 842 So.2d at 61. In other words, a defendant must demonstrate a "probability sufficient to undermine confidence in the outcome." Id.

Here, Appellant argued that trial counsel was ineffective for misadvising her that he and the State had made an agreement that if she fulfilled her cooperation against the other five co-defendants the State would recommend a maximum of ten (10) years' incarceration and he would request that she be sentenced as a youthful offender where she could be sentenced to just probation. (R. p. 16). Either way she would not be incarcerated for more than ten (10) years. Id. Had Appellant not relied on trial counsel's misadvice she would have proceeded to trial instead of pleading guilty. (R. p. 18).

The trial court denied Appellant's motion without requiring trial counsel to submit an affidavit and without holding an evidentiary hearing to determine whether Appellant's claims were meritorious. In denying Appellant's claim that she was misadvised of the sentence she would receive, the trial court found that Appellant suffered no prejudice, she stated during her plea colloquy she had not been promised anything, she did not identify any viable defenses, and did not demonstrate that there was a reasonable probability that she would not have pled absent counsel's alleged errors. (R. pp. 244-45).

The trial court's findings overlook the fact that Appellant was prejudiced. First, despite the fact that Appellant stated in her plea colloquy that she was not promised anything is not dispositive. A negative response to the trial court's question of whether anything was promised to defendant to induce a guilty plea does not conclusively refute post-conviction relief claims that her plea was product of trial counsel's alleged misrepresentation as to length of sentence she would actually receive. See State v. Leroux, 689 So.2d 235 (Fla. 1998) (misrepresentations by counsel as to the length of a sentence or eligibility for gain time can be the basis for postconviction relief in the form of leave to withdraw a guilty plea); Callazo v. State, 8 So.3d 1273 (Fla. 5th DCA 2009) (misrepresentations from counsel as to the length of a sentence can be the basis for post-conviction relief.). Furthermore, when Appellant questioned trial counsel why the plea agreement said twenty-seven (27)

years he told her not to worry, that the State had promised it would recommend no more than ten (10) years' incarceration if moving forward she completely cooperated with the prosecution of the five other co-defendants, and the judge would sentence her as a youthful offender. (R. p. 16).

Second, the fact that Appellant did not identify any viable defenses is not required under the prejudice prong. Appellant specifically alleged in her motion that, had counsel correctly informed her of the maximum amount of incarceration she faced, she would not have pled guilty and would have insisted on going to trial. (R. p. 18). Furthermore, she specifically alleged she relied on trial counsel's misadvice that her cooperation against the co-defendants would result in maximum incarceration of ten (10) years, which supports the conclusion that she placed particular emphasis on this misadvice in deciding whether or not to plead guilty. Hill v. Lockhart, 474 U.S. 52, 60 (1985).

In denying Appellant's ineffective assistance of counsel claim the trial court unreasonably applied the standard for a valid plea to her ineffective assistance of counsel claims – not just a clearly erroneous application of established Supreme Court precedent, but an objectively unreasonable application as well. By misapplying the standard, the trial court unreasonably extended Supreme Court precedent to a circumstance that the Supreme Court never intended for it to apply.

Therefore, Appellant's claim of ineffective assistance of counsel is not conclusively refuted by the record. It was impossible for the trial court to determine the contents of private conversations between trial counsel and Appellant concerning the sentence she would receive if she fully cooperated against her co-defendants without requiring trial counsel to submit an affidavit or holding an evidentiary hearing.

2. Appellant's Claim That Her Plea Was Entered in Violation of the United States and Florida Constitutions

"[A] plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover up of unconstitutionality." Boykin v. Alabama, 395 U.S. 238, 242-243 (1969).

The Florida Supreme Court has also held "that a plea of guilty when entered should be entirely voluntary by one competent to know the consequences of such a plea and the entering of a plea of guilty should not be induced by fear, misapprehension, persuasion, promises, inadvertence or ignorance." Hill v. State, 110 So.2d 464, 466 (Fla. 2d DCA 1959); Artigas v. State, 192 So. 795, 796 (Fla. 1939); see also Pope v. State, 47 So. 487 (Fla. 1908); Sinclair v. State, 182 So. 637 (Fla. 1938); La Barbera v. State, 63 So.2d 654 (Fla. 1953); Eckles v. State, 180 So. 764 (Fla. 1938); Casey v. State, 156 So. 282 (Fla. 1934) (Plea of guilty to a serious

criminal charge should be freely and voluntarily made and entered by accused without semblance of coercion and without fear or duress of any kind.)).

The Supreme Court in Boykin went on to hold:

> A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege.' Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void.

Boykin v. Alabama, supra at 243 (citing McCarthy v. United States, 394 U.S. 459 (1969)).

When determining whether a guilty plea is made knowingly, voluntarily and intelligently, a court must consider all the relevant facts and circumstances in the case, including, but not limited to, the nature and terms of the agreement and the age, experience, and background of the accused. Iowa v. Tovar, 541 U.S. 77, 78 (2004).

In Brady v. United States, the United States Supreme Court set forth a Constitutional standard for determining whether a guilty plea was voluntary:

> A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, **or his own counsel**, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable

> promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).

397 U.S. 742, 754 (1970) (citing Shelton v. United States, 242 F.2d 101, 115 (5th Cir. 1957) (emphasis added).

In carrying out the Constitutional duty to provide effective assistance, counsel has the responsibility to inform a client of the advantages and disadvantages, and of the direct consequences of entering a plea. Padilla v. Kentucky, 559 U.S. 356 (2010); Libretti v. United States, 516 U.S. 29, 51 (1995). A distinction between direct and collateral consequences is irrelevant to define the scope of constitutionally "reasonable professional assistance" required under Strickland. Padilla, 559 U.S. 356 (2010).

Failure on the part of counsel to provide this type of legal advice to an accused constitutes ineffective assistance of counsel. United States v. Broce, 488 U.S. 563, 547 (1989); Machibroda v. United States, 368 U.S. 487, 493 (1962); Kercheval v. United States, 274 U.S. 220, 223 (1927); Henderson v. Morgan, 426 U.S. 637, 653 (1927). The United States Supreme Court has thus set forth a three-pronged test: a plea of guilty must be (1) made voluntarily, (2) it must be made after proper advice from competent counsel, and (3) it must be made with a full understanding of the direct consequences of the conviction resulting from the plea. See Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005); Brady v. United States, 397 U.S. 742, 748,

(1970); Boykin v. Alabama, 395 U.S. 238, 242-43 (1969); United States v. Ruiz, 536 U.S. 622, 629 (2002); Jells v. Ohio, 498 U.S. 1111 (1991); Santobello v. New York, 404 U.S. 257 (1971); McMann v. Richardson, 397 U.S. 759 (1970); Lane v. Williams, 455 U.S. 624 (1982).

In Holmes v. United States, the Court of Appeals for the Eleventh Circuit stated "we are persuaded by the reasoning of the Fourth Circuit" which held:

> If the effective assistance of counsel might have produced an acquittal, a conviction at the conclusion of a trial upon a plea of not guilty will be vacated if the defense lawyer's performance was below the range of competence expected of lawyers in the conduct of criminal trials. There is no reason the same rule should not be applied when a guilty plea is induced by a lawyer's ignorance and misadvice to a client.... When the misadvice of the lawyer is so gross as to amount to a denial of the constitutional right to the effective assistance of counsel, leading the defendant to enter an improvident plea, striking the sentence and permitting a withdrawal of the plea seems only a necessary consequence of the deprivation of the right to counsel. Deprivation of the constitutional right cannot be left unredressed.

876 F.2d 1545, 1552 (11th Cir. 1989) (quoting Strader v. Garrison, 611 F.2d 61 (4th Cir. 1979)). The Eleventh Circuit has also held that when faced with a claim of ineffective assistance of counsel, "[i]f petitioner alleges facts that, if true, would entitle him to relief, then the district court should order an evidentiary hearing and rule on the merits of his claim." McCoy v. Wainwright, 804 F.2d 1196, 1199-1200 (11th Cir. 1986); see also Slicker v. Wainwright, 809 F.2d 768, 770 (11th Cir. 1987).

In United States v. Grammas, 376 F.3d 433 (5th Cir. 2004), the Court of Appeals for the Fifth Circuit held that "[f]ailing to properly advise the defendant of the maximum sentence that he could receive falls below the objective standard required by Strickland. When the defendant lacks a full understanding of the risks of going to trial, he is unable to make an intelligent choice of whether to accept a plea or take his chances in court." Id. at 436, (quoting Teague v. Scott, 60 F.3d 1167, 1171 (5th Cir. 1995)).

Florida courts have similarly held that misadvice by counsel to a defendant concerning the potential length of a sentence can be a basis for post-conviction relief. State v. Leroux, 689 So.2d 235, 236 (Fla. 1996) (citing Thompson v. State, 351 So.2d 701 (Fla. 1977), cert. denied, 435 U.S. 998, 98 S.Ct. 1653, 56 L.Ed.2d 88 (1978)). In Leroux, the Florida Supreme Court held **"[t]his Court and all of the district courts have long recognized that a defendant may be entitled to withdraw a plea entered in reliance upon his attorney's mistaken advice about sentencing."** 689 So.2d at 237 (emphasis added).

Florida courts have also held that defendants must be informed of the direct consequences of their plea and defense counsel has an obligation to ensure defendants adequately understand those direct consequences. Wilcox v. State, 638 So.2d 527, 528 (Fla. 5th DCA 1994) (citing Setzer v. State, 575 So.2d 747 (Fla. 5th

DCA 1991)). In order to withdraw on this basis, "there must be misadvice by counsel rather than mere nonadvice." Id.

The Florida Supreme Court has interpreted direct consequences to include "the consequences of the sentence which the trial court can impose." Bolware v. State, 995 So.2d 268, 273 (Fla. 2008) (quoting State v. Ginebra, 511 So.2d 960, 961 (Fla. 1987)).

> The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.

Major v. State, 814 So.2d 424, 431 (Fla. 2002) (quoting Zambuto v. State, 413 So.2d 461, 462 (Fla. 4th DCA 1982)).

As argued above and in Appellant's motion for post-conviction relief, Appellant's plea was involuntary and unknowingly based on plea counsel's misadvice that the State had agreed to recommend at her sentencing a maximum term of ten (10) years' incarceration in exchange for her fulfillment of cooperation against the five other co-defendants.

Appellant was the first to give a statement to the police in connection with the crimes committed. (R. p. 15). Yasmine McIntyre was arrested and interviewed just after Woods gave her first statement to the police. Id. During McIntyre's interview, she denied she knew a robbery would take place, but did know the men involved in

the robbery. Id. Although Appellant gave the police some information in regards to the events the night of the incident, she was not completely truthful during her first interview. (R. pp. 15-16). Appellant later met with the lead detective investigating the case and gave a proffer that was completely truthful as to who was involved in the robbery and death of Berson Michel. Id.

Based on this proffer the State offered Appellant a Plea and Sentencing Agreement with the State, whereby she agreed to testify truthfully against her co-defendants in exchange for the State entering a nolle prosequi of the first degree murder and burglary with an assault or battery counts. Id. Appellant agreed to enter a guilty plea to Robbery with a Firearm. Id. Trial counsel told her that he and the State had made an agreement that if she fulfilled her cooperation against the other five co-defendants the State would recommend a maximum of ten (10) years' incarceration, but he would request she be sentenced as a youthful offender where she could be sentenced to just probation. Id. Either way she would not be incarcerated for more than ten (10) years. Id. Appellant relied on trial counsel's advice despite the fact the Plea and Sentencing Agreement stated:

> …(b) the maximum period of incarceration in the Department of Corrections that shall be imposed by the Court at sentencing will be 27 years; … (d) there will be no mandatory minimum sentence since the defendant was not in actual possession of a firearm during the commission of the offense; (e) if the defendant believes she is entitled to a non-guideline sentence such as a

> downward departure or youthful offender sentence, she may request that of the Court, although the Court is under no obligation to impose such a sentence…

(Appendix, p. 2).

When Appellant questioned trial counsel why the agreement said twenty-seven (27) years he told her not to worry, that the State had promised it would recommend no more than ten (10) years' incarceration if moving forward she completely cooperated with the prosecution of the five other co-defendants, and the judge would sentence her as a youthful offender. (R. p. 16). Relying on this affirmative misadvice Appellant made her first statement at her plea hearing against co-defendant McIntyre on November 6, 2012. (R. pp. 16-17). Appellant stated on the record that she had misrepresented McIntyre's involvement in the crime, and that McIntyre was involved in the planning and set-up of the robbery. (Appendix). McIntyre subsequently changed her plea to guilty of Robbery with a Firearm on December 12, 2012. (R. p. 17).

Appellant continued to fulfill her obligations of cooperation where she testified at a deposition for co-defendant Jamal Jackson on February 6, 2013. (R. pp. 113-174). Her deposition testimony fully explained each co-defendants involvement. (R. pp. 118-59). Specifically, that Jackson initiated the robbery plan, and told each of the girls the roles they would play in the robbery. (R. pp. 126-131). Co-defendant, Chaquida Roosevelt, was responsible for letting Jackson, Manuel

Rey, and Damien Glover in Michel's apartment. (R. p. 142). Appellant further testified that Jackson and Rey had guns when they entered Michel's apartment, and Glover had a police baton. (R. p. 146). After the robbery, Rey stated he had shot Michel, and the five co-defendants drove to a subdivision to dispose of the baton that Glover was carrying. (R. pp. 153-57). In regards to the items taken from Michel's apartment, Appellant testified she saw two laptops, a watch, cellular phones, and McIntyre took several pairs of shoes. (R. pp. 152; 159). Appellant deposition prompted Jackson to change his plea to guilty of Second Degree Murder on January 31, 2014. (R. p. 17).

On March 11, 2014, Appellant continued to cooperate by testifying at the trial of Manuel Rey and Damien Glover. Id. At this point, she still believed plea counsel's affirmative misadvice that she would be sentenced as a youthful offender, and could not be sentenced to any more than ten (10) years' incarceration. Id. After her testimony, Rey and Glover were both found guilty of Murder in the First Degree, Burglary of a Dwelling, and Robbery with a Firearm. (R. pp. 177-231).

At Appellant's sentencing, the lead detective, Michael Moreschi, testified on Appellant's behalf. (R. p. 18). Detective Moreschi stated that he believed Appellant had been honest and up-front with him during the interview conducted at the Orange County Jail. Id. The State also informed the Court that Appellant "came off of" her story that she knew nothing about the robbery or the male co-defendants "pretty

quickly," and gave a proffer. (R. p. 85). The State further confirmed that Appellant had fully cooperated testified at the deposition, and told the truth at trial. (R. p. 18). Despite the fact that the Pre-Disposition Report recommended youthful offender sanctions, the Court disagreed and sentenced Appellant to twenty (20) years' incarceration. Id.

Trial counsel's affirmative misadvice as to the length of time she would actually have to serve in prison as ten (10) years maximum, and that she relied on this advice in entering her plea, only to learn later that she would have to serve twenty (20) years, are sufficient to state a claim of ineffective assistance of counsel. See State v. Leroux, 689 So.2d 235, 236-37 (Fla.1996); Brazeail v. State, 821 So.2d 364, 367-68 (Fla. 1st DCA 2002); Little v. State, 673 So.2d 151 (Fla. 1st DCA 1996). Had Appellant not believed trial counsel that she would be sentenced as a youthful offender and serve a maximum of ten (10) years incarcerated, she would not have pled and would have insisted on going to trial. (R. p. 18).

Furthermore, although the State did not fulfill its promise to recommend a maximum of ten (10) years' incarceration, each asked for leniency that irrefutably shows no one contemplated Appellant would be sentenced to twenty (20) years' incarceration. Id.

Detective Moreschi testified at Appellant's sentencing that he had observed real remorse from her during the sentencing hearing. Id. He could not understand

how the three female co-defendants had gone from being honor students to being in their current situation, but he felt all three had redeeming qualities and would later contribute something to society. (R. pp. 18-19).

Detective Moreschi continued,

> And even though Cheyanne wasn't, and I gave her -- I gave her a little more of the responsibility in this case because I felt like if there -- if any of the other five would have dropped out, this thing would have kept going, but if she had, this would have not happened.
> I understand -- and you were here, Judge -- and from Mr. Altman, that she -- when she sat here during the trial for the people that are fully responsible for killing Berson Michel, that she did the right thing, and I'm proud of her for that.

(R. p. 79).

The State also informed the Court that the three female co-defendants seemed like "very nice young women" and that it would surprise him if they were involved in something like this again. (R. pp. 85-86). The State continued,

> I don't think any of them knew that anything like this would come of this. They did know that Manny and Jamal had guns and carried guns with them a lot.
> I don't think any of them expected any -- anything; you know, any murder or any violence like this to happen, although perhaps that was foreseeable.
> As I said, they all were very cooperative once they -- very quickly, they testified at deposition. They told the truth at trial. They all said -- they all agreed to take polygraphs, although we didn't -- we didn't go to the trouble of doing that because it did seem that they were entirely honest.

> I don't believe this -- anything like this had happened before, that it was just the first time.

(R. p. 86).

Even the Pre-Disposition Report recommended youthful offender sanctions. (R. p. 239).

As such, Appellant's plea was entered unknowingly in violation of both the United States and Florida Constitutions under the totality of the circumstances. Appellant was misadvised of the sentence she would receive and suffered prejudice as a result. Although, Appellant stated during her plea colloquy she had not been promised anything and she did not identify any viable defenses in her motion, does not conclusively refute that there was a reasonable probability that she would not have pled absent counsel's errors.

3. Appellant's Claim That She Was Denied Due Process Where the Presiding Judge Relied on Evidence Adduced From the Co-Defendant's Trial to Determine Her Sentence

Appellant is cognizant of Swanson v. State, 984 So.2d 629 (Fla. 5th DCA 2008) in as much that judicial bias is procedurally barred when not argued on direct appeal. However, it is noteworthy that trial counsel was Appellant's direct appeal counsel. Furthermore, the fact that the trial judge had prejudged Appellant's sentence violated her due process rights.

CONCLUSION

Based upon the foregoing, this Court should remand the matter to the trial court to hold an evidentiary hearing on her claim of ineffective assistance of counsel and involuntary plea.

DATED this 16th day of June, 2016.

Respectfully submitted,

/s/ *Jennifer M. Manyen*
Jennifer M. Manyen, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email this 16th day of June, 2016 to the Attorney General's Office in the State of Florida.

/s/ *Jennifer M. Manyen*
Jennifer M. Manyen, Esq.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ *Jennifer M. Manyen*
Jennifer M. Manyen, Esq.