

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2038

CLAYTON D. MORROW,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Gadsden County.
Robert R. Wheeler, Judge.

February 28, 2020

PER CURIAM.

AFFIRMED.

RAY, C.J., and MAKAR and M.K. THOMAS, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

Clayton D. Morrow, pro se, Appellant.

APPENDIX: A-2

**DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151**

April 21, 2020

**CASE NO.: 1D19-2038
L.T. No.: 2003 CF 484**

Clayton D. Morrow v. State of Florida

Appellant / Petitioner(s), Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion docketed March 13, 2020, for rehearing and written opinion is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

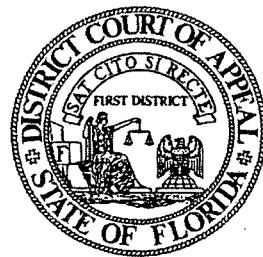
Served:

Hon. Ashley Moody, AG
Clayton D. Morrow

Robert Quentin Humphrey,
AAG

th

Kristina Samuels
KRISTINA SAMUELS, CLERK



APPENDIX: B

IN CIRCUIT COURT OF THE SECOND
JUDICIAL CIRCUIT IN AND FOR
GADSDEN COUNTY, FLORIDA

STATE OF FLORIDA,

Case No. 2003 CF 484

Plaintiff,

vs.

CLAYTON D. MORROW,

Defendant.

AMENDED ORDER DENYING MOTION FOR POST CONVICTION RELIEF

This matter having come before the Court upon Defendant's Fourth Motion for Post-Conviction Relief, and the Court having heard testimony from witnesses and argument of counsel and being adequately advised of the premises thereof, it is hereby Ordered and Adjudged:

PROCEDURAL HISTORY

1. On November 7, 2003, Defendant pled no contest to one count of attempted sexual battery by serious physical force and one count of burglary of a dwelling with person assaulted. The trial court sentenced Defendant to 15 years in the Department of Corrections for the attempted sexual battery by physical force, and sentenced Defendant to life in prison for the burglary of a dwelling with a person assaulted.

2. On February 18, 2017, Defendant filed a Fourth Motion for Post-Conviction Relief raising one claim: that counsel was ineffective by failing to relay a favorable plea offer from the State.

3. On April 30, 2019, this Court held an evidentiary hearing on Defendant's Motion. The court heard testimony from Defendant Morrow and Judy Hall (Defendant's trial counsel). The Court heard argument from the State and Defendant's counsel on this motion.

4. In order to prove that a defendant received ineffective assistance of counsel:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. **Second, the defendant must show that the deficient performance prejudiced the defense.** This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984). See also Jackson v. State, 452 So.2d 533 (Fla. 1984).

In establishing deficiency of performance (the first prong of this test), "the defendant must show that counsel's representation fell below an objective standard of reasonableness" based on "prevailing professional norms." Strickland, 466 U.S. at 688; Cherry v. State, 781 So.2d 1040, 1048 (Fla. 2000). The Strickland Court expanded upon the deficient-performance prong as follows:

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort 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. **Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy."**

Strickland, 466 U.S. at 689 (citation omitted). In establishing prejudice (the second prong of this test), "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 688; Jackson, 452 So.2d at 535.

5. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable" Strickland v. Washington, 466 U.S. at 690; Downs v. State, 453 So.2d 1102, 1108 (Fla. 1984). Strategic decisions that are reasonable under the norms of professional conduct do not constitute ineffective assistance of counsel. Brown v. State, 894 So.2d 137, 147 (Fla. 2004). "For counsel's actions to rise to the level of constitutional ineffectiveness, [this] strategic decision must have been completely unreasonable, not merely wrong, so that [it] bear[s] no relationship to a possible defense strategy." Fox v. Ward, 200 F.3d 1286, 1296 (10th Cir. 2000).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COUNSEL WAS INEFFECTIVE FOR FAILING TO CONVEY A FAVORABLE PLEA OFFER TO DEFENDANT

6. Defendant Morrow testified that a series of emails between the prosecutor and his defense attorney revealed a 25 year offer from the State. He claimed that this 25 year offer was never conveyed to him, and that if it was, he would have accepted it. He admitted that he knew his defense counsel was engaged in plea negotiations. He denied knowing that his counsel was going to request a downward departure.

7. Defendant's trial counsel, Judy Hall, had no independent recollection of the plea offers in this case, or whether she conveyed the offer to Defendant Morrow. She could not confirm or deny that she communicated the plea offer to Defendant Morrow. Ms. Hall acknowledged writing a letter to the victim asking for a compromise sentence (State Ex. 2). Ms. Hall explained that she would write letters such as this to victims asking for agreement to a compromise sentence without consulting the client. She acknowledged that the sentencing guidelines imposed a lowest permissible sentence of 115.2 months (under 10 years), and that she requested a downward departure sentence at the sentencing hearing.

8. Defendant has failed to prove that his trial counsel was deficient for failing to convey a plea offer. Despite her lack of independent recollection, the evidence provides that trial counsel conveyed the plea offer to Defendant Morrow. Trial counsel wrote a detailed letter to the victim about Defendant's remorse, excuses for the crime, and asking for agreement to a compromise sentence. This letter indicates active plea negotiations. Confirming this, Defendant Morrow admitted that he knew his trial counsel was involved in plea negotiations. The letter to the victim, along with Defendant's admission, indicates active plea negotiations that require trial counsel to communicate offers to the client including this 25 year offer from the State.

9. Additionally, Defendant Morrow has failed to prove prejudice by proving that he would have accepted the 25 year offer from the State. The sentencing scoresheet imposed a lowest permissible sentence of under 10 years, his trial counsel requested a downward departure sentence, and trial counsel wrote the victim asking for her

agreement to a 6 year prison sentence followed by 6 years probation. The evidence clearly indicates that Defendant Morrow was negotiating for a sentence much lower than the 25 year sentence offered by the State. Although Defendant Morrow testified that he would have accepted the 25 year offer, the other evidence indicates otherwise, and this court finds Defendant Morrow's testimony not credible.

This is a final, appealable order, and Defendant has the right to appeal within 30 days of the rendition of this Amended Order Denying Motion for Post Conviction Relief.

Done and Ordered in Chambers, Tallahassee, Leon County, Florida this 18 day of September, 2019.



Robert R. Wheeler
Circuit Judge

cc:

State Attorney

Defense Counsel

Clayton Morrow, DC 798067
Graceville Correctional Facility
5168 Ezell Road
Graceville, Florida 32440-2402



LAW OFFICES OF THE
PUBLIC DEFENDER

NANCY DANIELS
PUBLIC DEFENDER

SECOND JUDICIAL CIRCUIT OF FLORIDA
Franklin • Gadsden • Jefferson • Leon • Liberty • Wakulla

Telephone:
(850) 627-9241
Fax:
(850) 875-3718

Attachment #6

October 13, 2003

Dorothy Shiver
Quincy FL

Dear Ms. Shiver:

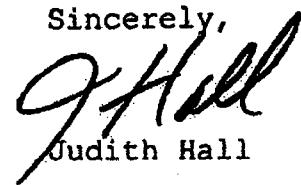
Please let me assure you that in no way do I intend to harass you or trouble you. I just want you to know that Clay wants to extend his apologies to you. He would do it himself but he is not allowed to do so. Clay is very, very remorseful for what happened to you. I have watched him sit and grieve about what he did to you with the tears running down his face. I would also like to say that I have watched his mother suffer terribly over what happened to you as well as what is happening to her son.

Please hear me out. I hate to see families torn apart. I understand your need for an early resolution of this case. Let me know if there is any chance that we could mediate this family situation and reach a halfway agreement. As Clay is now charged, he could get a life sentence but the sentencing guidelines recommend a sentence of 11.5 years in prison. At this time, there are two extremes. You feel overwhelmed by what happened to you and want a serious prison sentence. Clay's mother feels like Clay has never done anything like this when he was sober. She thinks that Clay would never have done anything like this if he wasn't drinking and on drugs. She feels that if he went to an 18 month treatment program and was put on probation which forced him to not drink or drug by doing random urinalysis every week, that nothing like this would ever happen again.

There must be some middle ground between these two positions. I would like to suggest a halfway sentence that would be fair to you and to Clay which is a 6 year prison sentence with the other 6 years to be suspended to be followed by probation with a condition to never drink or drug again and to do weekly urinalysis to prove he is clean and sober. If he did drink, he would have to go back to prison for the remaining 6 years.

I think that this would give Clay a serious prison sentence and at the same time provide assurance that nothing like this would ever happen again. Thank you for listening to me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hall".

Judith Hall

APPENDIX: C



LAW OFFICES OF THE
PUBLIC DEFENDER

NANCY DANIELS
PUBLIC DEFENDER

SECOND JUDICIAL CIRCUIT OF FLORIDA
Franklin • Gadsden • Jefferson • Leon • Liberty • Wakulla

Telephone:
(850) 627-9241
Fax:
(850) 875-3718

Attachment #6

October 13, 2003

Dorothy Shiver
Quincy FL

Dear Ms. Shiver:

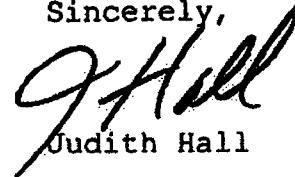
Please let me assure you that in no way do I intend to harass you or trouble you. I just want you to know that Clay wants to extend his apologies to you. He would do it himself but he is not allowed to do so. Clay is very, very remorseful for what happened to you. I have watched him sit and grieve about what he did to you with the tears running down his face. I would also like to say that I have watched his mother suffer terribly over what happened to you as well as what is happening to her son.

Please hear me out. I hate to see families torn apart. I understand your need for an early resolution of this case. Let me know if there is any chance that we could mediate this family situation and reach a halfway agreement. As Clay is now charged, he could get a life sentence but the sentencing guidelines recommend a sentence of 11.5 years in prison. At this time, there are two extremes. You feel overwhelmed by what happened to you and want a serious prison sentence. Clay's mother feels like Clay has never done anything like this when he was sober. She thinks that Clay would never have done anything like this if he wasn't drinking and on drugs. She feels that if he went to an 18 month treatment program and was put on probation which forced him to not drink or drug by doing random urinalysis every week, that nothing like this would ever happen again.

There must be some middle ground between these two positions. I would like to suggest a halfway sentence that would be fair to you and to Clay which is a 6 year prison sentence with the other 6 years to be suspended to be followed by probation with a condition to never drink or drug again and to do weekly urinalysis to prove he is clean and sober. If he did drink, he would have to go back to prison for the remaining 6 years.

I think that this would give Clay a serious prison sentence and at the same time provide assurance that nothing like this would ever happen again. Thank you for listening to me.

Sincerely,

A handwritten signature in black ink, appearing to read "J Hall".

Judith Hall

WILLIAM N. MEGGS
STATE ATTORNEY



1-A E. JEFFERSON STREET
QUINCY, FLORIDA 32351-2405
TELEPHONE (850) 627-9647

OFFICE OF
STATE ATTORNEY
SECOND JUDICIAL CIRCUIT OF FLORIDA

October 16, 2003

Assistant Public Defender Judith Hall
24 North Adams Street
Suite #1
Quincy, Florida 32351

Ms. Hall,

I am writing in response to your letter of October 13, 2003, to Ms. Dorothy Shiver. As you are aware, Ms. Shiver is the victim in the pending felony case of State of Florida v. Clayton Morrow Gadsden County Case 03-484CFA. It is my understanding that you intend to represent this defendant on charges of Attempted Sexual Battery with Great Physical Force and Burglary of a Dwelling with a Person Assaulted. Ms. Shiver has just delivered your letter to my office and unfortunately has been caused great stress due to its contents.

While I am sure an attorney of your years is aware that the victim of a crime is not a party to a criminal proceeding, you appear to be engaging in plea negotiations with her regarding a possible suspended prison sentence. As the State's representative in this action, I ask that any negotiations or offers you may wish to make on behalf of your client be sent directly to me. Ms. Shiver has been repeatedly assured that she has no responsibilities in this criminal prosecution other than testifying truthfully. Since this case involves a family unit, your insinuation to the contrary has both confounded these assurances and may cause other family members to believe that Ms. Shiver is the motivation for these charges being brought. This is not true. Under Florida Law, the authority to bring felony criminal charges is lodged solely in the Office of the State Attorney or in an empaneled Grand Jury. Suggesting otherwise is both legally incorrect and, as in this case, leads to hardship for the people we serve. Legal counsel knowingly undermining this fundamental component of the criminal justice system is unforgivable.

WILLIAM N. MEGGS
STATE ATTORNEY

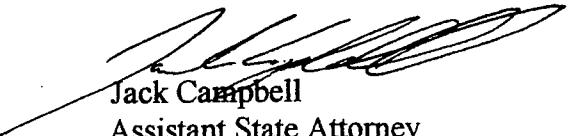


1-A E. JEFFERSON STREET
QUINCY, FLORIDA 32351-2405
TELEPHONE (850) 627-9647

OFFICE OF
STATE ATTORNEY
SECOND JUDICIAL CIRCUIT OF FLORIDA

Due to the unnecessary hardship caused by your representations, Ms. Shiver no longer wishes to be contacted directly or indirectly by you or your office. She is available for deposition or to testify in any judicial proceeding. Otherwise, she understands she has no legal duty to discuss this case in any way. She now considers any other type of contact to be harassment and thus actionable.

It is unfortunate that Ms. Shiver was caused further pain and injury by this misrepresentation. I continue to seek justice for her attacker and to represent the State of Florida. There are many factors to consider in any plea negotiation, both mitigating and aggravating. Pressure applied against the victim of a crime is an aggravating factor and must be considered as such. With that in mind, I sincerely believe that further trauma to this victim is in no ones best interest, and that we as professionals, should endeavor to prevent it.


Jack Campbell
Assistant State Attorney

cc.

State Attorney William N. Meggs
Public Defender Nancy Daniels

APPENDIX: E

Clayton MonroeCASE NUMBER 03-484 CFA
02-656 CFA

PLEA AND ACKNOWLEDGEMENT OF RIGHTS

I hereby enter a plea of () no contest, () guilty to the following criminal offense(s), withdrawing any previous
a of not guilty
03-484

int	1	Offense	Att sex btl w. mask	Max/Min Penalty	30
int	2	Offense	Burg Dwlg w/ Assault 2-656 VOP	Max/Min Penalty	life
int	1	Offense	no arrest	Max/Min Penalty	5
int	2	Offense	no arrest	Max/Min Penalty	5

My plea is entered with the understanding that the state has agreed or does not object to the following disposition
in my case:

Adj 6 guidelines score points do not exceed 181.6
no agreement as to sentence

My plea is entered with the acknowledgment and understanding of the following:

(1) I understand the judge will place me under oath to question me about this plea. I must answer the judge's
questions truthfully, and if I make a false statement while under oath, I could be prosecuted for perjury.

(2) I understand that a plea of not guilty denies my guilt, a plea of guilty admits my guilty, and a plea of no contest
means that I will not contest the evidence against me. I also understand that if the Judge accepts this plea of guilty or no
contest, there will be no trial and that I will be sentenced based on my plea.

(3) I understand the nature of the charges to which I am pleading and I am aware of the maximum and minimum
sentences. My lawyer has informed me of the facts the State would have to prove before I could be found guilty and
discussed with me any possible defenses that could be raised in my case. I am satisfied with my lawyer's advice and help.

(Sign on reverse side after reading both sides carefully)

(4) I understand that if the Judge accepts this plea, I give up the right to a trial, the right to require the State to prove the charge against me beyond a reasonable doubt, the right to have a jury decide whether I am guilty or not guilty, the right to see and hear the witnesses against me and to have my lawyer question them, the right to subpoena and present witnesses or other evidence or any defenses I may have, and to testify or remain silent as I choose.

(5) I understand that by pleading guilty or no contest, I am giving up the right to appeal all matters relating to the final judgement, including the issue of my guilty or innocence. If the Judge accepts this plea, the only issues I will be able to appeal are those relating to my sentence and the Judge's authority to hear my case. I understand that I have 30 days to appeal the court's judgement and sentence, and if I cannot afford a lawyer, one will be appointed for me.

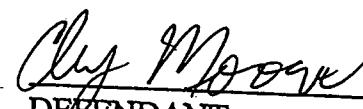
(6) I understand that if I am not a United States citizen, a plea of guilty or no contest could result in my deportation.

(7) I understand that the Judge may assess court costs against me under the Florida Statute governing my case, and that the judge will impose court costs in the amount of \$200.00 (\$50.00 for misdemeanors) under F.S. 27.3455; in the amount of \$50.00 under F.S. 960.20; in the amount of \$5.00 under F.S. 943.25; and in the amount of \$20.00 to Crimestoppers Program under Chapter 98-319 F.S.

(8) I have read this entire form carefully, front and back, and I understand all of the rights and duties explained in this form.

I state to the Court that I am not under the influence of drugs or alcohol, that no one forced or threatened me to enter this plea, and that I am entering this plea freely and voluntarily. I acknowledge that I am entering this plea because I believe it is in my best interest.

SWORN TO AND FILED in open court in the presence of my lawyer and the Judge this 22 day of
October 2003 A.D.


DEFENDANT

I hereby certify that I am counsel for the defendant and that I have informed the defendant of the nature of each charge against him/her, the maximum penalty, any applicable minimum penalty, the required elements of proof, and any possible defenses. I believe the defendant understands the rights and duties explained in this plea form and that the defendant is entering this plea freely and voluntarily with a full and complete understanding of the consequences.


COUNSEL FOR DEFENDANT

CIRCUIT JUDGE