

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

JANUARY TERM 2009

WILBERT PIERRE,

Appellant,

v.

Case No. 5D08-4096

STATE OF FLORIDA,

Appellee.

/

Decision filed March 6, 2009

3.850 Appeal from the Circuit Court
for Volusia County,
James R. Clayton, Judge.

Wilbert Pierre, Moore Haven, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Allison Leigh Morris,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Pierre appeals the trial court's dismissal of his post-conviction motion entitled "Emergency Writ of Mandamus/Habeas Corpus/error/All Writs," in which he alleged that his plea was involuntary because he was not advised that the entry of the plea might subject him to deportation. Pierre initially filed this petition in the Florida Supreme Court. By order dated May 21, 2008, the Supreme Court transferred the case to the circuit court and directed that it "treat the petition as if it had been originally filed there on the date it was filed in this Court." The trial court summarily dismissed the petition,

finding that Pierre had failed to state a claim for relief. We reverse and remand for an evidentiary hearing.

Although not a model of clarity, Pierre's petition does allege that he is facing "imminent" deportation and that he was not advised during his plea colloquy that the entry of a plea would subject him to deportation. In an exhibit attached to his petition, Pierre alleges that he would not have entered the plea if he had been aware of the possible consequences. A transcript of Pierre's plea colloquy is attached to his petition and supports his claim. Finally, Pierre's petition was filed with the Florida Supreme Court within two years of the date on which his judgment and sentence became final. The petition adequately stated a claim for relief. *State v. Green*, 944 So. 2d 208 (Fla. 2006).

REVERSED and REMANDED for An Evidentiary Hearing.

TORPY, EVANDER and COHEN, JJ., concur.