

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

JANUARY TERM 2009

JERMAINE WRIGHT,

Appellant,

v.

Case No. 5D09-57

STATE OF FLORIDA,

Appellee.

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Opinion filed June 26, 2009.

3.850 Appeal from the Circuit
Court for Brevard County,
Charles M. Holcomb, Judge.

Jermaine Wright, Madison, pro se.

Bill McCollum, Attorney General,
Tallahassee, and Rebecca Roark Wall,
Assistant Attorney General, Daytona
Beach, for Appellee.

PLEUS, Jr., R., Senior Judge,

Jermaine Wright challenges the summary denial of his postconviction motion. His first two claims alleged trial counsel was ineffective in questioning a police officer at trial and failing to depose a witness before trial. The next two claims alleged the trial court committed fundamental error by admitting hearsay evidence at trial and then convicting him in the absence of sufficient evidence of guilt. We affirm the denial of

relief on these four claims, as each was either conclusively refuted by the record, procedurally barred, or otherwise without merit.

Wright's fifth and final postconviction claim alleged counsel was ineffective for coercing him to testify and telling him what to say on the stand. He further claimed counsel misadvised that if he testified, counsel would ensure he was sentenced to only three years' imprisonment on the lesser charge of aiding and abetting. Wright asserted that the outcome of the trial would have been different if counsel had not forced him to testify. The trial court did not address this claim and the limited portions of the record before us do not refute it.

Therefore, we remand for the trial court to either hold an evidentiary hearing on ground five or attach those portions of the record conclusively refuting the claim.

AFFIRMED in part; REVERSED in part, and REMANDED.

SAWAYA and COHEN, JJ., concur.