

Supreme Court of Florida

No. SC04-848

JESSIE JAMES MILTON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

[March 17, 2005]

PER CURIAM.

We have jurisdiction in this case based upon article V, section 3(b)(3), of the Florida Constitution. We review only the issue as to whether the trial court erred in summarily denying petitioner relief based upon his claim that counsel's failure to call a witness was ineffective assistance. In accord with our decision in Nelson v. State, 875 So. 2d 579 (Fla. 2004), we quash the decision of the district court, Milton v. State, 872 So. 2d 965 (Fla. 5th DCA 2004), with respect to its affirmance of the trial court's summary denial of petitioner's claim for relief. We remand the case to the district court and direct that the case be remanded to the trial court so

that petitioner may be permitted to amend his claim for relief within a reasonable time to be specified by the trial court.

It is so ordered.

PARIENTE, C.J., and WELLS, ANSTEAD, QUINCE, CANTERO, and BELL, JJ., concur.

LEWIS, J., concurs in result only with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

LEWIS, J., concurring in result only.

I concur only in the result here that will afford the Petitioner the opportunity to return to the trial court to have this matter determined on the merits rather than resolving the dispute upon the imposition of unnecessary artificial technical words of pleading. I continue to adhere to the views I expressed in the dissent in Nelson v. State, 875 So. 2d 579 (Fla. 2004).

Application for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions

Fifth District - Case No. 5D03-179

(Volusia County)

Jessie James Milton, pro se, Miami, Florida

for Petitioner

Charles J. Crist, Jr., Attorney General, Tallahassee, Florida, Kellie A. Nielan and
Pamela J. Koller, Assistant Attorneys General, Daytona Beach, Florida,

for Respondent