

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

JULY TERM 2004

JAMES HENDERSON,

Appellant,

v.

CASE NO. 5D02-3632

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 1, 2004.

3.850 Appeal from the Circuit Court
for Orange County,
Anthony H. Johnson, Judge.

James Henderson, Apalachicola, pro se.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and Rebecca Roark Wall,
Assistant Attorney General, Daytona Beach,
for Appellee.

THOMPSON, J.,

James Henderson appeals the denial of his post-conviction motion filed pursuant to Rule 3.800. He argues on appeal that the trial court erred when it refused to appoint counsel to represent him at his evidentiary hearing and that his counsel was ineffective under the criteria established in Strickland v. Washington, 466 U.S. 668 (1984). We disagree and affirm.

Because a post-conviction motion is a civil matter, a defendant is not entitled to an attorney unless the assistance of counsel is essential to accomplish a fair and thorough presentation of the claims. See Ladson v. State, 829 So. 2d 305 (Fla. 5th DCA 2002); Hylleberg v. State, 729 So. 2d 409

(Fla. 5th DCA 1999); Wheeler v. State, 807 So. 2d 94 (Fla. 1st DCA 2002). In this case, we agree with the trial court that the issues were factual and not complex and that the trial court was not required to appoint counsel to represent Henderson at the evidentiary hearing. Henderson was able to call witnesses, including his trial attorney, and able to cross-examine the witnesses called by the state.

AFFIRMED.

PLEUS and ORFINGER, JJ., concur.