

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

BARRY JOHN LEE,
Appellant,

UCN: 512019AP000070APAXWS

Appeal No.: 19-AP-70

v.

L.T. No.: 19-MM-0191

STATE OF FLORIDA,
Appellee.

On appeal from Pasco County Court,
Honorable Joseph Poblick

Maria Christine Perinetti, Esq.
for Appellant.

Justin L. Homburg,
Assistant State Attorney,
for Appellee.

ORDER AND OPINION

Appellant's argument that the trial court should have granted his motion to withdraw plea because the plea was not knowing and voluntarily given is without merit and the trial court's order is affirmed on that point without further comment. The Court writes only to address Appellant's argument that the trial court should have appointed him conflict-free counsel based upon his allegations that trial counsel misadvised him. A defendant is only entitled to the appointment of conflict-free counsel if the motion to withdraw plea creates an adversarial relationship with trial counsel *and* the defendant's allegations are not conclusively refuted by the record. *Sheppard v. State*, 17 So. 3d 275, 287 (Fla. 2009). Because Appellant's plea was knowing and voluntarily given, his motion was refuted by the record and he was not entitled to the appointment of conflict-free counsel.

It is therefore ORDERED and ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida
this ____ day of _____, 2020.

Original Order entered on November 18, 2020, by Circuit Judges Shawn Crane,
Susan G. Barthle, and Kimberly Campbell.

Copies to:

Honorable Joseph Poblick

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