Supreme Court of Florida

No. SC12-773

ETHERIA V. JACKSON,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

[May 30, 2013]

PER CURIAM.

Etheria V. Jackson appeals an order of the circuit court denying his motion for postconviction DNA testing pursuant to Florida Rule of Criminal Procedure 3.853 and section 925.11, Florida Statutes.[1] For the reasons below, we affirm.

I. BACKGROUND

Jackson was convicted of first-degree murder and sentenced to death for the 1985 stabbing murder of Linton Moody, and the facts pertinent to the crime are set forth in this Court's opinion on direct appeal. See Jackson v. State, 530 So. 2d 269, 270-71 (Fla. 1988), cert. denied, 488 U.S. 1050 (1989). With the exception of

1. We have jurisdiction. See art. V, § 3(b)(1), Fla. Const.

a partial reversal allowing CCRC to represent Jackson in a 42 U.S.C. § 1983 method-of-execution action, we have also denied Jackson's requests for postconviction relief and his petitions for writs of habeas corpus. See Jackson v. Dugger, 633 So. 2d 1051 (Fla. 1993); Jackson v. Singletary, 613 So. 2d 5 (Fla. 1993) (table); Jackson v. State, 952 So. 2d 1190 (Fla. 2006) (table); Jackson v. State, 50 So. 3d 1137 (Fla. 2010) (table).

In this case, Jackson filed a motion under rule 3.853 requesting postconviction DNA testing on six items collected by law enforcement in connection with the investigation of Moody's murder. Jackson claimed the test results would establish that alleged eyewitness Linda Riley was the actual killer or discredit her testimony that she witnessed Jackson beat and stab Moody to death in the apartment she shared with Jackson, resulting in his acquittal or the mitigation of his sentence. Specifically, Jackson sought DNA testing on the arm cast he wore at the time of Moody's murder, two butcher knives and a brown belt collected from his and Riley's apartment that he claims are murder weapons, and Moody's pants and eyeglasses, arguing that the denial of DNA testing would violate his equal protection and due process rights to introduce evidence of third-party guilt.[2] Of these items, the State was only able to locate the cast.

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2. Jackson failed to preserve additional constitutional arguments raised for the first time in this Court, namely that the denial of his motion violates his right to access the courts and that his CCRC counsel's inability to file a section 1983

The circuit court summarily denied Jackson's motion, concluding that "there is no reasonable probability that [Jackson] would have been acquitted or would have received a lesser sentence" if DNA evidence from these items had been admitted at trial. The circuit court did not hold an evidentiary hearing to resolve disputes concerning the existence and location of the knives, belt, pants, and eyeglasses, finding, instead, that these items "either no longer exist, or they are no longer in the State's possession[,] and their whereabouts are unknown."

II. ANALYSIS

Because we agree with the circuit court that there is no reasonable probability that Jackson would have been acquitted or received a lesser sentence if the requested DNA evidence had been admitted at his trial, we affirm the summary denial of Jackson's motion.[3]

Rule 3.853 sets forth the requirements for a motion for postconviction DNA testing, and there is no dispute that Jackson's motion facially complied with the rule.[4] However, in Scott v. State, 46 So. 3d 529, 533 (Fla. 2009), we recognized

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action on his behalf violates his due process and equal protection rights. See Sireci v. State, 908 So. 2d 321, 325 (Fla. 2005).

3. The standard of review is de novo. See Scott v. State, 46 So. 3d 529, 533-34 (Fla. 2009) (reviewing de novo a circuit court's order summarily denying a defendant's motion for postconviction DNA testing).

4. Florida Rule of Criminal Procedure 3.853(b) requires that a motion for postconviction DNA testing include:

that even a motion that facially complies with rule 3.853 may "remain[] legally insufficient" where the defendant "fail[s] to show that there is a reasonable probability the test results would exonerate him or lessen his sentence." To make this showing, we have held that the defendant must demonstrate "how the DNA testing will exonerate [him] or . . . mitigate [his] sentence" by "reference to specific facts about the crime and the items requested to be tested." Id. (quoting Robinson v. State, 865 So. 2d 1259, 1265 (Fla. 2004)). Where "the defendant

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> (1) a statement of the facts relied upon in support of the motion, including a description of the physical evidence containing DNA to be tested and, if known, the present location or last known location of the evidence and how it originally was obtained;
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> (2) a statement that the evidence was not previously tested for DNA, or a statement that the results of previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the movant is not the person who committed the crime;
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> (3) a statement that the movant is innocent and how the DNA testing requested by the motion will exonerate the movant of the crime for which the movant was sentenced, or a statement how the DNA testing will mitigate the sentence received by the movant for that crime;
>
> (4) a statement that identification of the movant is a genuinely disputed issue in the case and why it is an issue or an explanation of how the DNA evidence would either exonerate the defendant or mitigate the sentence that the movant received;
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> (5) a statement of any other facts relevant to the motion; and
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> (6) a certificate that a copy of the motion has been served on the prosecuting authority.

Fla. R. Crim. P. 3.853(b).

cannot show that DNA will prove or negate a material fact, the request for testing should be denied." Id. We conclude that Jackson has not met his burden with respect to any item for which he seeks DNA testing.

Jackson first seeks DNA testing on an arm cast he wore at the time of Moody's murder. At trial, Jackson's cast was admitted into evidence, and the jury heard expert testimony that an examination and chemical testing failed to reveal the presence of blood on it. See Jackson, 530 So. 2d at 271. Jackson argued at trial that the absence of Moody's blood on his cast (which he told police he had washed prior to his arrest because it was dirty) supported his theory that Riley was the actual killer and discredited Riley's testimony that Jackson repeatedly beat Moody about the face with his cast during the murder. For example, during closing argument, Jackson's counsel argued that "[t]he cast doesn't provide any corroboration" to Riley's testimony because "[n]o blood was found on it." Here, Jackson claims that DNA testing will reveal the lack of Moody's saliva, sweat, or skin cells on the cast in addition to the lack of his blood and that if the jury had heard this, along with testimony that DNA does not disappear when an item is washed, a reasonable probability exists that the jury would have either acquitted him or recommended a life sentence. We disagree.

Jackson makes the same argument in his motion concerning Moody's blood and skin cells that he unsuccessfully made regarding Moody's blood at trial.

Specifically, like his trial argument that Moody's blood would be on his cast if he were the actual killer, Jackson's motion states that if Riley's testimony that he murdered Moody is correct, "blood and/or skin cells from Mr. Moody should be present on the cast." We conclude that there is no reasonable probability that DNA evidence supporting the same argument that Jackson made at trial would result in his acquittal or a lesser sentence. Accordingly, we affirm the denial of DNA testing on the cast.[5]

Next, Jackson requests DNA testing on two knives and a belt that law enforcement collected from the apartment he shared with Riley. Jackson maintains that some or all of these items are likely murder weapons and, therefore, should contain DNA from both Moody and the actual killer. None of these items were introduced into evidence at Jackson's trial. Instead, at trial, Riley testified that she threw away one of the two knives and one of the two belts she claimed Jackson

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5. Jackson argues in his initial brief that the outcome would have been different if the jury had heard that it is possible to obtain a DNA profile from an item that has been washed. However, because Jackson did not make this argument before the circuit court, it is not preserved. See Sireci, 908 So. 2d at 325. Moreover, we reject the argument on the merits. Jackson does not allege or cite a scientific study for the proposition that a DNA profile may always be obtained from a washed item. Also, though Jackson distinguishes blood from other types of DNA in his briefs, he argued in his motion that Moody's "blood and/or skin cells" should be present on his cast and generally stated that "[t]he absence of Mr. Moody's DNA on the cast will exonerate [him] or at the very least mitigate his sentence." Thus, even if DNA testing revealed the absence of Moody's DNA (whether it be from blood, sweat, skin, or saliva) on Jackson's admittedly washed cast, Jackson is still left with the argument he made at trial.

used in the murder. Riley further testified that she either also threw the second knife away or put it in the sink and that she could not recall if the belt she threw away was the one used to choke Moody or tie him up. At the time, Jackson used Riley's trial testimony to argue that she lacked credibility because she admittedly disposed of evidence that could have corroborated her claim that Jackson killed Moody. Now, Jackson argues it is likely that the actual killer was cut during the protracted struggle involved in Moody's murder, that the killer's blood or skin cells would be on the knife, and that the killer's DNA would be on the belt. Jackson further claims that if DNA testing reveals Moody's DNA on the same knife or belt that would conclusively prove the actual killer's identity. We disagree.

Jackson's claim that the knives and belt are likely murder weapons containing biological material suitable for testing is speculative. These items were not admitted into evidence at trial; the record does not reflect that they were tested for blood or fingerprints (though such tests were performed on other items); and nothing in the record suggests that Riley was cut or injured in connection with Moody's murder or that blood was present on any of the alleged murder weapons. See Lott v. State, 931 So. 2d 807, 820-21 (Fla. 2006) (affirming the denial of DNA testing where defendant failed to identify evidence in the record demonstrating that

the items requested to be tested were connected to the crime and contained genetic material suitable for testing).

However, even if Jackson is correct that the knives and belt were used in Moody's murder, DNA testing on them would not conclusively establish the actual killer's identity. First, there is no guarantee that Jackson's DNA would have been deposited on these items, even if they were the murder weapons. And the test results would not change the evidence presented at trial connecting Jackson to the murder, including his incriminatory statements and fingerprints on the victim's calling card box. See Jackson, 530 So. 2d at 270-71; see also Gore v. State, 32 So. 3d 614, 619-20 (Fla. 2010) (explaining that DNA test results would not prove the defendant was not the perpetrator or that he was not present at the crime scene where the evidence "clearly connected [him] to the murder").

Further, Riley's DNA on the knives and belt could be explained by other reasons. Riley admittedly touched the belt used to tie Moody, and there is no distinction in the record between the two belts used in Moody's murder. Similarly, because Riley also admitted that she touched both knives used in the murder (to either throw one or both of them away or, possibly, put one in the sink), her DNA on them would be equally nonprobative of the actual killer's identity. Even if DNA testing revealed Riley's blood on one of the knives, due to the lack of support in the record that she was cut or injured in connection with Moody's

murder, the logical conclusion is that, at some point, Riley cut herself on a common household item used for cutting, not that she must be the actual killer. See Gore, 32 So. 3d at 619 (affirming denial of DNA testing on items that "could likely have been related to the murder but were never used to inculpate [the defendant]" where the defendant did not show how DNA testing "could be used to exonerate him of the murder"); Hitchcock v. State, 991 So. 2d 337, 348 (Fla. 2008) (holding that "[s]hared living space provides a reasonable, innocent explanation for the presence of" the supposed killer's DNA). Accordingly, because there is no reasonable probability that DNA testing on the knives and belt would have resulted in Jackson's acquittal or a lesser sentence, we affirm the denial of DNA testing on them.

Lastly, Jackson requests DNA testing on Moody's pants and eyeglasses. At trial, Riley testified that she and Jackson went through Moody's pockets and that Jackson was straddled over Moody's chest stabbing him while Moody lay face up on the floor. See Jackson, 530 So. 2d at 270. Riley also testified that, after Jackson killed Moody, she helped him wrap Moody up in carpet, and the evidence at trial established that Moody's body was found in the back of his own car wrapped in carpet from Riley and Jackson's apartment. See id. Here, Jackson claims that if Riley's testimony is correct, then Moody's pants pockets should contain his DNA. Jackson also claims that DNA testing should reveal the actual

killer's sweat and/or skin cells on Moody's eyeglasses because the evidence established a protracted struggle between Moody and his killer, which resulted in Moody's eyeglasses being pushed down around his throat. We disagree that DNA testing on these items would have changed the outcome of Jackson's case.

Like the knives and belt, Jackson speculates that Moody's pants and eyeglasses contain biological material suitable for DNA testing. However, even if they do, there is not a reasonable probability that the results would have exonerated Jackson or mitigated his sentence. By requesting testing of these items, Jackson attempts to prove a negative (i.e., that the absence of his DNA conclusively establishes that he is not the actual killer), even though there is no guarantee that the killer's DNA would have been deposited on them during the murder. Considering the significant evidence of Jackson's guilt identified in our decision in his direct appeal and the fact that the jury did not acquit or recommend a life sentence based on the lack of Moody's blood on the cast (despite Riley's testimony that Jackson beat Moody about the face with it), there is no reasonable probability that the jury would have acquitted Jackson or recommended a lesser sentence if it had also been presented with the lack of a biological connection between Jackson and Moody's pants or eyeglasses. See Willacy v. State, 967 So. 2d 131, 145 (Fla. 2007) (concluding that "because DNA testing would not eliminate significant and

substantial evidence directly linking [the defendant] to [the] murder, it would not give rise to a reasonable probability of acquittal or a lesser sentence").

Further, even if Riley's DNA was deposited on either item, this would not discredit her testimony. Riley admitted to going through Moody's pockets and to helping wrap his body in carpet from the apartment she shared with Jackson. Therefore, her DNA could have gotten on Moody's pants or eyeglasses during this process, and it could have been transferred to the eyeglasses from the carpet, even if the eyeglasses never directly touched the carpet. Regardless of whose (if anyone's) DNA is or is not in Moody's pants pockets or on his eyeglasses, there is no reasonable probability that Jackson would have been acquitted or received a lesser sentence had the jury heard this information. Therefore, we affirm the denial of DNA testing on these items.

Accordingly, because there is no reasonable probability that Jackson would have been acquitted or received a lesser sentence if DNA evidence from any of the requested items had been admitted at his trial, we affirm the circuit court's summary denial of his motion. See Scott, 46 So. 3d at 534 (concluding that an evidentiary hearing was not required where "no further investigation was necessary to determine that no possible DNA test result could exonerate [the defendant] or lessen his sentence" and "whether the evidence is in existence and whether it would be admissible became irrelevant . . . after the trial court correctly concluded

that [the defendant] presented no argument supporting a reasonable probability that he would be acquitted or would have received a lesser sentence").[6]

III. CONCLUSION

For the foregoing reasons, we affirm the circuit court's denial of Jackson's motion for postconviction DNA testing.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

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

An Appeal from the Circuit Court in and for Duval County,
Lawrence Page Haddock, Jr., Judge - Case No. 85-12620-CF

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6. Also, Jackson is not entitled to relief on his constitutional claims because DNA testing would not have changed the outcome of his case. See Scott, 46 So. 3d at 534-35 (concluding a defendant's claim that he was "constitutionally entitled to a right of access to DNA evidence" was "meritless because the DNA evidence would not have entitled [him] to any relief").