

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

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

MICHAEL J. ANNICCHIARICO,

Appellant,

v.

Case No. 5D19-3033

STATE OF FLORIDA,

Appellee.

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Opinion filed July 31, 2020

3.850 Appeal from the Circuit  
Court for Volusia County,  
James R. Clayton, Judge.

Michael J. Annicchiarico, Milton, pro se.

Ashley Moody, Attorney General,  
Tallahassee, and Rebecca Rock  
McGuigan, Assistant Attorney General,  
Daytona Beach, for Appellee.

COHEN, J.

Michael Annicchiarico appeals the denial of his amended motion for postconviction relief. The lower court summarily denied grounds 1, 2(b), and 3(b) of Annicchiarico's amended motion and denied claims 2(a) and 3(a) following an evidentiary hearing. We affirm.

In ground 1, Annicchiarico claimed that his trial counsel, Jeffrey Dees ("trial counsel"), was ineffective for failing to raise a competency issue because at the time he

entered his plea, he was involuntarily intoxicated by the medical staff at the Volusia County Jail, who administered psychotropic medication to him. Annicchiarico asserted that he was prescribed a higher dose of one medication than recommended and that he hallucinated and heard voices during his court proceedings, such that he could not understand the consequences of entering his plea. Thus, he claimed that his plea was entered involuntarily.

We agree with the lower court that the record conclusively refutes Annicchiarico's claim that trial counsel was ineffective for failing to raise a competency issue at the plea hearing. Doward v. State, 802 So. 2d 518, 519 (Fla. 5th DCA 2001) (“[R]elief may be summarily denied only where the record conclusively refutes the claim.” (citing Young v. State, 789 So. 2d 1160, 1161 (Fla. 5th DCA 2001))). During his plea colloquy, Annicchiarico indicated that he was not under the influence of any drug that might influence his judgment and expressed that he was not hallucinating or hearing voices. The fact that Annicchiarico was prescribed psychotropic medications while incarcerated does not equate to involuntary intoxication. Therefore, trial counsel was not ineffective for failing to argue that Annicchiarico was involuntarily intoxicated or that his plea was entered involuntarily. Russ v. State, 937 So. 2d 1199, 1201 (Fla. 1st DCA 2006) (“A claim of ineffective assistance of counsel for failure to object to a plea's entry based on the appellant's use of psychotropic medication during the plea hearing may be refuted where an appellant affirmatively states that his medication does not affect the knowing and voluntary nature of his plea.” (citations omitted)).

In grounds 2(b) and 3(b), Annicchiarico argued that trial counsel did not inform him of the consequences and penalties he faced if he took the State's plea offer and that trial

counsel did not inform him that if he went to trial, the State would have to prove the essential elements of the charged crime, offer a reduced charge, or acquit him. We also agree with the lower court that the transcript of the plea colloquy affirmatively refutes those claims. Doward, 802 So. 2d at 519.

In grounds 2(a) and 3(a), Annicchiarico argued that trial counsel misadvised him concerning the State's first plea offer, which he had rejected, and the plea offer that he ultimately agreed to, which required him to plead to second-degree murder. He alleged that trial counsel encouraged him to accept the plea deal "to be done with it."

At the evidentiary hearing, the lower court took testimony from Annicchiarico and trial counsel, and letter correspondence between the two was entered into evidence. The lower court determined that trial counsel was more credible than Annicchiarico and concluded that Annicchiarico was properly advised regarding the multiple plea offers. That determination was supported by competent substantial evidence, as the letters between Annicchiarico and trial counsel, in addition to the testimony, demonstrated that Annicchiarico was well informed of the State's plea offers and the conditions that accompanied them. See Foster v. State, 132 So. 3d 40, 56 (Fla. 2013) (stating that postconviction court's findings, including findings on credibility, will not be reversed if they are supported by competent substantial evidence). The final letter from trial counsel informed Annicchiarico that the decision to enter a plea was only his to make and that his wishes would control. Trial counsel also stated that he was prepared to go to trial if Annicchiarico decided to do so. Accordingly, the lower court did not err in denying Annicchiarico's amended postconviction motion on this basis.

Finally, on appeal, Annicchiarico asserts that his plea agreement required him to assist law enforcement in locating the victim's body; his failure to do so would void the negotiated range of sentences, subject him to the statutory maximum of life in prison, and prohibit him from withdrawing his plea. Annicchiarico details that he took law enforcement to the location of the victim's body, but law enforcement was unable to locate any remains. He claims that several years later, the victim's body was found in the exact spot where he had taken law enforcement.

Although we find this issue concerning, Annicchiarico did not provide any argument in his amended postconviction motion as to how the later discovery of the victim's remains rendered his trial counsel ineffective, nor did he broach the topic during the evidentiary hearing. Accordingly, we are unable to address the issue, as it was raised for the first time on appeal. See Hutchinson v. State, 17 So. 3d 696, 703 n.5 (Fla. 2009) (finding that defendant failed to preserve issue for appeal when he argued facts that demonstrated his innocence below but never claimed his attorney was ineffective for failing to present such evidence).

AFFIRMED.

EDWARDS and SASSO, JJ., concur.