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

MARRIO D. WILLIAMS,

Appellant,

v. Case No. 5D20-817

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed September 18, 2020

3.850 Appeal from the Circuit
Court for Citrus County,
Richard A. Howard, Judge.

Rachel E. Reese, of O'Brien Hatfield
Reese, P.A., of Tampa, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Nora Hutchinson Hall,
Assistant Attorney General, Daytona
Beach, for Appellee.

TRAVER, J.

We affirm the summary denial of Appellant's motion for postconviction relief, filed under Florida Rule of Criminal Procedure 3.850, on Grounds One, Five, Six, Ten, and

Eleven.[1] We reverse on Ground Thirteen, in which Appellant asserts trial counsel was ineffective for failing to obtain a competency evaluation before Appellant was tried for and convicted of the first-degree murder of a police informant. Although Appellant's claim is facially insufficient, we remand for the postconviction court to give him an opportunity to amend.

Appellant contends that trial counsel did not obtain a competency evaluation despite two doctors opining he was intellectually disabled. He asserts his trial counsel should have used these doctors or an independent expert to establish his incompetency to proceed to trial. He does not suggest he could not understand the proceedings or assist his trial counsel, but Appellant generally claims he was incompetent at trial. He argues he was prejudiced because of this incompetence and the life sentence imposed. In the absence of an evidentiary hearing, we assume these facts are true unless the record refutes them. *Peede v. State*, 748 So. 2d 253, 257 (Fla. 1999).

In summarily denying Appellant's claim, the postconviction court attached three psychological reports opining Appellant was intellectually disabled. Based on these reports and the trial court's independent observations, it found Appellant ineligible for the death penalty. *See* Fla. R. Crim. P. 3.203. The reports do not, however, reference Appellant's competency to proceed. *See* Fla. R. Crim. P. 3.211(a)(1) (outlining the standard for competency to proceed as "whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and

[1] Appellant has abandoned Grounds Two through Four, Seven through Nine, and Twelve by failing to raise them in his initial brief. *See Ward v. State*, 19 So. 3d 1060, 1061 (Fla. 5th DCA 2009).

whether the defendant has a rational, as well as factual, understanding of the pending proceedings"); *see also Dusky v. United States,* 362 U.S. 402, 402 (1960).

The postconviction court also attached a two-page excerpt of the trial transcript, in which it conducted a colloquy with Appellant. In this colloquy, the trial court asked Appellant if he "had ever been found to be insane, incompetent, mentally challenged, [or] had your rights taken away and not restored to you." When Appellant asked the trial court to rephrase the question, it asked "[h]ave you ever been found to be crazy?" Appellant said no. This isolated and brief discussion is insufficient to refute Appellant's allegations. *See Turem v. State*, 220 So. 3d 504, 507 (Fla. 5th DCA 2017). Accordingly, the record provided by the trial court does not refute Appellant's allegations.

We do not find, however, that Appellant has met his high burden to allege deficient performance and resulting prejudice for this type of claim. *See generally Thompson v. State*, 88 So. 3d 312, 319 (Fla. 4th DCA 2012). To illustrate deficient performance, Appellant must allege "specific facts showing that a reasonably competent attorney would have questioned [his] competence to proceed." *Id*. Conclusory allegations do not demonstrate counsel was deficient in handling a competency issue, and they do not compel an evidentiary hearing. *Id*. Indeed, not every instance of low intelligence or mental deficiency equates to incompetence to stand trial. *Id*. (citing *Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995)).

To allege prejudice adequately, Appellant must "set forth clear and convincing circumstances that create a real, substantial and legitimate doubt as to [his] competency." *Id*. at 320. Before granting an evidentiary hearing, the postconviction court may consider the totality of the circumstances to determine whether Appellant has met this burden. *Id*.

This includes: "(1) the nature of the mental illness or defect which forms the basis for the alleged incompetency; (2) whether the movant has a history of mental illness or documentation to support the allegations; (3) whether the movant was receiving treatment for the condition during the relevant period; (4) whether experts have previously or subsequently opined that defendant was incompetent; and (5) whether there is record evidence suggesting that the movant did not meet the *Dusky* standard during the relevant time period." *Id*.

Here, Appellant makes only the most general assertion of incompetence. While the trial court's ruling that he was intellectually disabled under rule 3.203 certainly provides some evidence to support his claim, it is insufficient standing alone to warrant an evidentiary hearing. Because Appellant has not yet had the chance to amend his motion, we reverse the summary denial of Ground Thirteen to give him this opportunity, assuming Appellant can do so in good faith. *See Spera v. State*, 971 So. 2d 754, 762 (Fla. 2007).

AFFIRMED in part; REVERSED in part; and REMANDED.

WALLIS and EISNAUGLE, JJ., concur.