IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2008

LEONARD LUCKEY,

Appellant,

v. CASE NO. 5D06-3851

STATE OF FLORIDA,

Appellee.

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Opinion filed February 15, 2008

3.850 Appeal from the Circuit Court for Volusia County,
R. Michael Hutcheson, Judge.

Leonard Luckey, Orlando, pro se.

Bill McCollum, Attorney General, Tallahassee, and Robin A. Compton, Assistant Attorney General, Daytona Beach, for Appellee.

LAWSON, J.

Leonard Luckey, appearing pro se, appeals the trial court's orders denying his motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850. The trial court summarily denied five of Luckey's six postconviction claims, and denied the last claim after conducting an evidentiary hearing. We affirm the summary denial of Luckey's claims two, three, four, and five, without further comment. We reverse as to Luckey's other two claims, for the reasons explained below.

Luckey was charged by amended information with burglary of a dwelling with a battery. He was tried by jury, convicted as charged and sentenced to natural life as a Prison Releasee Reoffender ("PRR").[1] His conviction and sentence were affirmed on appeal. *Luckey v. State*, 876 So. 2d 575 (Fla. 5th DCA 2004). A mandate was issued on June 29, 2004.

Luckey filed his motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 on June 22, 2006. As his first issue, Luckey claimed that his counsel was ineffective for failing to request that he receive a "further" mental health exam, failing to tell the court that he was taking prescribed psychotropic medication during the trial, and also failing to request that the court instruct the jury that he was taking psychotropic medication pursuant to Florida Rule of Criminal Procedure 3.215. We read Luckey's claim as an attempt to assert that counsel was ineffective for allowing Luckey to proceed to trial while incompetent, or for failing to pursue an available insanity defense. The State pointed out and the trial court agreed that as to this claim Luckey has not asserted in his motion that he actually was incompetent to proceed to trial or insane at the time of his offense. We agree that that the claim was therefore facially insufficient. *Cf. Gillis v. State*, 807 So. 2d 204 (Fla. 5th DCA 2002) (recognizing postconviction relief movant's conclusory allegations that he was incompetent to plead guilty to robbery, unsupported by any corroborating evidence, was insufficient to state a claim for relief); *Baker v. State*, 404 So. 2d 1151 (Fla. 5th DCA 1981) (holding a motion by a prisoner asserting, as basis for his claim of ineffective assistance of counsel, his own mental incompetence at time of trial, in general terms with no corroboration and no

[1] § 775.082(9), Fla. Stat. (2003).

evidence of confirmation did not warrant or mandate evidentiary hearing on motion for postconviction relief).

However, the Florida Supreme Court has recently ruled that a defendant who files a legally insufficient rule 3.850 motion should be given at least one opportunity to correct the deficiency, unless it is apparent that the defect cannot be corrected. *See Spera v. State*, 32 Fla. L. Weekly S680, --- So.2d ----, 2007 WL 3196507 (Fla. Nov. 1, 2007), rehearing denied, No. SC06-1304, ---So.2d ---- (Fla. Dec. 26, 2007). Although the trial court denied Luckey's motion prior to the issuance of *Spera*, this case was in the appellate "pipeline" when *Spera* was decided. Therefore, *Spera* applies. *See Smith v. State*, 598 So.2d 1063, 1066 (Fla.1992).

In his sixth claim, Luckey contends that his trial counsel was ineffective for failing to warn him that he faced a mandatory term of life imprisonment as a PRR if he rejected the State's fifteen-year plea offer in favor of going to trial. An evidentiary hearing was held on the matter. Our review of the transcript of this hearing raises substantial competency concerns that the trial court should have addressed before proceeding further. At the start of the proceeding, Luckey claimed that he did not understand why he was in court or what was going on. He offered to plea guilty to whatever charges he was there to address, and repeatedly noted that he had just been transported from the "psych" unit. When questioned about whether he had any discussions with his trial counsel about plea offers by the State or whether he recalled any discussion about being a PRR, Luckey stated that he did not recognize his trial counsel, James Caldwell, who was present at the hearing. Luckey could not recall going to trial on a burglary charge, and claimed to be unaware that he had received a life sentence. Luckey also

repeatedly informed the court that he was taking medication for his mental condition, and asked if he could come back to court after taking his medication – when he might be able to understand what was going on and why he was there. Under these circumstances, the trial court should have ordered a competency evaluation before proceeding with an evidentiary hearing on Luckey's claim. Fla. R. Crim. P. 3.210; *see also, Boyd v. State*, 910 So. 2d 167, 186-88 (Fla. 2005) (recognizing trial courts are to order competency hearings whenever it appears necessary based on the defendant's history or behavior in court); *Molina v. State*, 946 So. 2d 1103 (Fla. 5th DCA 2006) (holding a trial court's failure to order a competency hearing on its own motion whenever it has reasonable grounds to believe that the defendant is not competent to proceed constitutes an abuse of discretion).

Accordingly, we affirm the trial court's denial of Luckey's claims two, three, four and five, and reverse its denial of the other two claims. We remand for further proceedings consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

TORPY and COHEN, JJ., concur.