FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-1638

MICHAEL WOLFE MORRIS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Marianne L. Aho, Judge.

November 5, 2019

PER CURIAM.

Michael Morris appeals an order summarily denying his motion for postconviction relief brought under Florida Rule of Criminal Procedure 3.850. We affirm.

Morris was convicted in 2014 of first-degree murder for shooting his wife seven times during an argument at their home. He was sentenced to life in prison and his judgment and sentence were affirmed on direct appeal. *Morris v. State*, 166 So. 3d 773 (Fla. 1st DCA 2015). Morris then filed a pro se motion for postconviction relief that he amended once, raising multiple claims of ineffective assistance of counsel. After retaining counsel, he filed a second amended motion for postconviction relief. The trial court summarily denied his motion, and this appeal follows.

We review the summary denial of a motion for postconviction relief de novo, and we will affirm the trial court's order only where the claims are facially invalid or conclusively refuted by the record. *Hill v. State*, 258 So. 3d 577, 579 (Fla. 1st DCA 2018). To prevail on a claim of ineffective assistance of counsel, the movant must satisfy two requirements. First, he must specifically identify the acts or omissions of counsel that fell below a standard of reasonably competent performance as measured by prevailing professional norms. *Strickland v. Washington*, 466 U.S. 668, 690 (1984). Second, he must show that there is a reasonable probability that the outcome of the proceeding would have been different but for counsel's deficient performance. *Id.* at 694. Because both prongs must be satisfied, if counsel's performance was not deficient under the first prong, then there is no need for a reviewing court to address prejudice under the second prong. *Long v. State*, 118 So. 3d 798, 805 (Fla. 2013).

Morris first claims that his defense counsel was ineffective for failing to consult with or present an expert witness to show that Morris suffered from battered spouse syndrome (BSS) and, as a result, lacked the requisite mental state to commit murder. "BSS is not itself a legal defense, but evidence that the defendant suffers from BSS is admissible in Florida to support a claim of self-defense when the defendant is charged with a crime against [his] abuser." *Wagner v. State*, 240 So. 3d 795, 797 (Fla. 1st DCA 2017). However, a defendant cannot present evidence of an abnormal mental condition not constituting legal insanity to argue that he did not have the specific intent or state of mind necessary to commit an offense. *Chestnut v. State*, 538 So. 2d 820, 825 (Fla. 1989).

At his trial, Morris did not rely on a claim of self-defense. Moreover, the record shows that the shooting occurred when he grabbed the victim and pulled her back inside the house as she was trying to escape because he did not want her to send him to jail for something he did not do. Nor does he allege that his mental condition would support an insanity defense. Therefore, he could not rely on BSS as a vehicle to introduce evidence of his mental state or diminished capacity in an attempt to negate the requisite intent for murder. *See Hodges v. State*, 885 So. 2d 338, 352 n.8 (Fla. 2009) (reaffirming that counsel is not ineffective for failing to present evidence that the defendant's mental capacity prevented

him from acting with premeditation). Morris has failed to demonstrate that counsel's performance was deficient, and the trial court properly denied this claim.

Next, Morris claims that his defense counsel was ineffective for failing to call lay witnesses that would corroborate his claims of suffering from BSS. Because counsel was not ineffective for failing to present an expert witness on the issue of BSS, she was not ineffective for failing to call lay witnesses to corroborate the expert's testimony. The trial court properly denied this claim.

Morris also argues that his defense counsel was ineffective for failing to present BSS evidence at his sentencing hearing. But because he failed to raise this claim in the trial court, it cannot be considered for the first time on appeal. *See Mendoza v. State*, 87 So. 3d 644, 661 (Fla. 2011).

In his next claim, Morris argues that his defense counsel was ineffective for failing to request a *Richardson*[*] hearing and move for a mistrial when the State failed to turn over the victim's cell phone allegedly containing evidence of her behavior that supported his BSS defense. However, his postconviction counsel did not include this claim in his second amended motion for postconviction relief and the trial court did not rule on it. Therefore, this claim was abandoned. *Watson v. State*, 247 So. 3d 685, 687 (Fla. 1st DCA 2018).

Morris additionally claims that his defense counsel was ineffective for failing to object to an alleged misstatement of the law by the prosecutor during closing arguments. Specifically, he focuses on a single statement at the very end of closing arguments where the prosecutor said that "premeditation can be formed in an instant." However, premeditation can be formed in a moment before the killing and need only exist for enough time to allow the defendant to be aware of what he is about to do and the likely result of his actions. *Oliver v. State*, 214 So. 3d 606, 618–19 (Fla. 2017). It can also be formed after the attack has begun. *Demurjian v. State*, 557 So. 2d 642, 644 (Fla. 4th DCA 1990). Even if it had

[*] *Richardson v. State*, 246 So. 2d 771 (Fla. 1971).

been a misstatement of the law, the record shows that when it is considered in the context of the prosecutor's closing argument as a whole, this single statement does not rise to the level of a deficiency that undermines confidence in the outcome of the trial. *See Franqui v. State*, 59 So. 3d 82, 98 (Fla. 2011). Accordingly, this claim was properly denied.

Morris also claims that his defense counsel was ineffective for failing to argue in a motion for judgment of acquittal that the State's proof of premeditation was entirely circumstantial. However, the circumstantial evidence standard applies only when all evidence of the defendant's guilt is circumstantial, not when an element of the crime is shown entirely by circumstantial evidence. *Knight v. State*, 186 So. 3d 1005, 1010 (Fla. 2016). This case was not an entirely circumstantial evidence case as Morris admitted to shooting his wife.

Even if it were a circumstantial evidence case, such evidence must be viewed in the light most favorable to the State and can include the type of weapons used, previous difficulties between the parties, the manner in which the killing was committed, and the nature and manner of the wounds inflicted. *Twilegar v. State*, 42 So. 3d 177, 190 (Fla. 2010). The record shows Morris's own testimony established that he pursued his wife downstairs as they argued, prevented her from calling for help, beat her in the face and head, grabbed her and pulled her back inside the home as she tried to escape, and then shot her seven times at point-blank range including the side of her head and chest. This was sufficient evidence to put the issue of premeditation before the jury. *See Lantz v. State*, 263 So. 3d 279, 284 (Fla. 1st DCA 2019) (holding there was sufficient circumstantial evidence to submit the issue of premeditation to the jury based on an argument between the defendant and the victim that occurred just before her murder, the vicious nature of the attack and the victim's multiple injuries, and the defendant's confession that he killed the victim).

In his final claim, Morris argues he is entitled to relief due to the cumulative effect of these alleged errors. Because all of Morris's individual claims of ineffective assistance failed for the reasons discussed above, his claim of cumulative error must also fail. *See McCoy v. State*, 113 So. 3d 701, 723 (Fla. 2013).

For these reasons, we affirm the trial court's order summarily denying his motion for postconviction relief.

AFFIRMED.

RAY, C.J., and B.L. THOMAS and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Michael Wolfe Morris, pro se, for Appellant.

Ashley Moody, Attorney General, and Trisha Meggs Pate, Assistant Attorney General, Tallahassee, for Appellee.