

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-1182

DEVONTE BAKER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Petition Alleging Ineffective Assistance of Appellate Counsel—
Original Jurisdiction.

October 19, 2022

PER CURIAM.

The Court denies the petition alleging ineffective assistance of appellate counsel on the merits.

ROWE, C.J., and LONG, J., concur; B.L. THOMAS, J., concurs with opinion.

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

B.L. THOMAS, J., concurring.

I agree that Petitioner's claims are meritless.

A State investigation showed that the victim, a two-year-old child, was in Petitioner's care and custody when she received a head injury. When the victim's mother—Petitioner's girlfriend—returned home, she became concerned that the child was still asleep at midday. She picked the child up, found her unresponsive with significant amounts of blood in her mouth, and started screaming. The mother and Petitioner took the child to the hospital, and the ICU staff attempted emergency surgery and life-saving measures. The child never awoke. Petitioner at first claimed that the victim slipped in the shower and fell. But the medical examiner stated that the victim's injury was inconsistent with such an incident.

During a subsequent investigation, Petitioner gave several inconsistent and false accounts of the incident before he told law enforcement that he grew frustrated with the victim crying after injuring her lip in the shower. He admitted that he shoved the victim to the ground, she struck her head on the floor, and she became unresponsive. Petitioner stated that he then took her to her bed because he was scared to seek medical attention.

The State charged Petitioner with second-degree murder by inflicting blunt force trauma and aggravated child abuse. During the trial, the mother testified that she often left the victim in Petitioner's custody because she woke up at three o'clock in the morning to deliver newspapers before she went to her second job at a daycare. The pediatric ICU specialist that examined the victim testified that a CT scan showed "horrendous" swelling and a skull fracture so severe that portions of the skull had pierced the victim's brain. The victim also had injuries that suggested Petitioner subjected her to rotational force such as shaking or twisting because an ordinary fall could not cause these injuries.

Petitioner testified in his own defense and claimed that the victim fell from his arms. He stated that he did not deliberately intend to hurt the victim, but he admitted that he lied to police

during the interrogation because he was afraid to tell the whole truth.

The jury found Petitioner guilty as charged on both counts, and the trial court sentenced him to life in prison on count I with a concurrent thirty-year sentence on count II. In Petitioner's direct appeal, his counsel argued that the trial court erred in denying a motion for judgment of acquittal since the State failed to present sufficient evidence to support a second-degree murder charge. We affirmed his convictions and sentences and issued our mandate on November 23, 2016.

Since this Court issued its mandate, Appellant has filed three postconviction appeals. One appeal involved claims of ineffective assistance of trial counsel, and the other two involved claims of an illegal sentence. Petitioner did not obtain relief in any of these cases.

Petitioner's current claims are also meritless. His first argument is little more than a restatement of his prior rule 3.800(a) claim restructured as a claim that appellate counsel was ineffective. Specifically, he argues that Appellate counsel was ineffective for failing to file a rule 3.800(b)(2) motion to correct a sentencing error and argue that his life sentence on count I is illegal because it exceeds the thirty-year maximum for a first-degree felony. Petitioner argues that the jury made no findings of aggravated manslaughter of a child, which he contends is necessary to justify the life sentence. This claim is meritless because the jury found Petitioner guilty of second-degree murder, a crime punishable by up to life in prison.

Petitioner's second claim is just as meritless. He contends that appellate counsel failed to argue that the trial court committed a fundamental error when it instructed the jury that the State did not have to prove Petitioner intended to cause the death of the victim to find him guilty of second-degree murder. Petitioner ignores that the State charged him with second-degree murder under section 782.04(2) and 782.07(3), Florida Statutes (2012). Section 782.04(2) states that "the unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life,

although without any premeditated design to effect the death of any particular individual, is murder in the second degree.” The State did not have to prove that Petitioner acted with the specific intent to cause the victim’s death, merely that he committed a dangerous act without regard for the victim’s wellbeing that resulted in the victim’s death. The trial court did not improperly instruct the jury or otherwise commit a fundamental error when it instructed them.

Petitioner’s final argument is that the trial court committed a fundamental error when it instructed the jury on the lesser-included offense of aggravated manslaughter of a child because the State did not allege the age of the victim in the information. The State alleged that the victim was under the age of eighteen in the information, and Petitioner fails to show the existence of a fundamental error.

Appellate counsel was not ineffective for failing to raise any of these meritless arguments. *See Zack v. State*, 911 So. 2d 1190, 1204 (Fla. 2005) (holding that appellate counsel is not ineffective for failing to raise a meritless issue on direct appeal). Petitioner’s current filing is the latest in a series of repetitive, frivolous cases that consume this Court’s scarce judicial resources and delay the resolution of other pending matters. For these reasons, I concur with the panel on denying the petition alleging ineffective assistance of appellate counsel.

Devonte Baker, pro se, Petitioner.

Ashley Moody, Attorney General, Tallahassee, for Respondent.