

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D22-1668

CHRISTOPHER J. HRANEK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
R. Anthony Salem, Judge.

December 2, 2022

PER CURIAM.

AFFIRMED.

KELSEY and LONG, JJ., 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 with opinion.

I agree that Appellant's claims are meritless.

Appellant appeals an order summarily denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850 in which he alleged that his trial counsel was ineffective. This Court affirms the trial court order for the reasons outlined below.

For events that occurred between December 1, 2016, and March 26, 2017, the State charged Appellant with three counts of sexual battery on a person 12 years of age or older but less than 18 years of age. On June 5, 2018, a jury found Appellant guilty as charged on all counts, and the trial court sentenced him to three concurrent life sentences. This Court affirmed his convictions and sentences and issued its mandate on January 7, 2020. *See Hranek v. State*, 285 So. 3d 302 (Fla. 1st DCA 2019).

Appellant now appeals an order denying his supplemental amended motion for postconviction relief. In that motion, he raised seven general claims and several subclaims that counsel was ineffective at trial.

To prove ineffective assistance of counsel, a defendant must allege and demonstrate that: (1) the specific acts or omissions of counsel "were outside the wide range of professionally competent assistance"; and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Strickland v. Washington*, 466 U.S. 668, 690–94 (1984). To satisfy the deficiency prong, "[t]he defendant must allege specific facts that, when considering the totality of the circumstances, are not conclusively rebutted by the record and that demonstrate a deficiency on the part of counsel which is detrimental to the defendant." *Blackwood v. State*, 946 So. 2d 960, 968 (Fla. 2006) (quoting *LeCroy v. Dugger*, 727 So. 2d 236, 239 (Fla. 1998)). Concerning the prejudice prong, "[a] reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* The defendant must demonstrate a likelihood of a different result that is substantial and not just conceivable. *Harrington v. Richter*, 562 U.S. 86, 112 (2011). If the defendant

fails to satisfy one prong of the *Strickland* analysis, it is unnecessary to consider the other prong. *Waterhouse v. State*, 792 So. 2d 1176, 1182 (Fla. 2001).

Appellant's motion alleged that counsel was ineffective for: 1) failing to investigate and call potential defense witnesses at trial; 2) failing to object to false statements by the prosecutor, inconsistent witness testimony, and trial court errors; 3) failing to prepare for trial, including failing to review pretrial interview and arrest reports, failing to familiarize himself with the victim's purported prior inconsistent statements, failing to familiarize himself with a prior plea offer, and failing to explain the State's exhibits to Appellant before his testimony at trial; 4) failing to properly object to the closure of the trial court during the victim's testimony; 5) failing to investigate *Miranda* violations during his initial detention and interview by law enforcement; 6) failing to retain an expert in electronic imaging to test the reliability of the State's video and photographic evidence; and 7) cumulative deficiencies.

Appellant also raises several claims on appeal that he did not raise in his motion below. These claims cannot be considered for the first time on appeal. *Abrams v. Paul*, 453 So. 2d 826, 827 (Fla. 1st DCA 1983) (“[I]t is axiomatic that it is the function of the appellate court to review errors allegedly committed by trial courts, not to entertain for the first time on appeal issues which the complaining party could have, and should have, but did not, present to the trial court.”).

As to the claims Appellant raised below, the postconviction court did not err in denying them. Concerning the first claim, the trial court properly concluded that counsel's investigation was reasonable. Furthermore, Appellant did not allege that the witnesses that counsel allegedly should have called were available for trial. It is integral to the allegations of prejudice that the defendant allege that the witness was available to testify. *Nelson v. State*, 875 So. 2d 579, 583 (Fla. 2004) (“If a witness would not have been available to testify at trial, then the defendant will not be able to establish deficient performance or prejudice from counsel's failure to call, interview, or investigate that witness.”) Appellant also did not identify with any specificity what the

substance of these witnesses' testimony would have been. *See Leftwich v. State*, 954 So. 2d 714 (Fla. 1st DCA 2007) ("In order to state a facially sufficient claim on this ground, the movant must allege the identity of the potential witness, the substance of the witness's testimony, an explanation of how the omission of the testimony prejudiced the outcome of the case, and a representation that the witness was available for trial").

In his second claim, Appellant fails to show prejudice in his arguments that counsel should have objected to improper prosecutorial comments in closing arguments. The trial transcripts support the postconviction court's findings that the prosecutor's comments were fair arguments on the evidence presented, and the prosecutor's remark that it was time for Appellant to be held accountable was merely asking the jury to convict Appellant. Thus, counsel had no legitimate grounds on which to object, and counsel is not ineffective for failing to make a meritless objection. *See Hitchcock v. State*, 991 So. 2d 337, 361 (Fla. 2008).

As to his third claim, Appellant does not allege which State's exhibits counsel allegedly failed to share with him before trial. He also does not specify which pre-arrest statements and interview reports counsel should have reviewed or how counsel's alleged failure to familiarize himself with these reports affected the trial's outcome. Concerning the victim's purported prior inconsistent statements, Appellant does not address on appeal the postconviction court's finding that counsel did in fact impeach the victim as is reflected in the trial transcript pages cited by the court.

In his fourth claim, Appellant argued that, while counsel objected to the trial court's decision to close the court during the victim's testimony, counsel failed to make the argument that such a closure only applies to victims under the age of sixteen. Appellant argued that, if his family and several of his proposed witnesses had been in the courtroom during the victim's testimony, these individuals would have come forward and volunteered to testify that the victim was lying. This claim was subject to denial as speculative. His assertion that certain witnesses might have come forward rests on pure conjecture. A speculative claim of this nature cannot form the basis of relief. *See Connor v. State*, 979 So. 2d 852,

863 (Fla. 2007) (“Relief on ineffective assistance of counsel claims must be based on more than speculation and conjecture.”); *Maharaj v. State*, 778 So. 2d 944, 951 (Fla. 2000) (“Postconviction relief cannot be based on speculation or possibility.”).

In his fifth claim, Appellant argues that counsel should have investigated alleged *Miranda* violations during his detention by police. However, Appellant does not identify any statements that the State introduced at trial that were allegedly made during his detention or interrogation. Appellant has therefore not identified any testimony to which trial counsel could have objected.

In his sixth claim, Appellant argues that counsel should have retained an electronic imaging expert to test the reliability of the State’s evidence and the victim’s testimony concerning the video and still photos of the crime taken on the victim’s iPad. At trial, the victim testified that during the third criminal incident, the victim had been exchanging texts with a friend, using an iPad, when Appellant entered the room and began the sexual battery. The victim used the iPad to discreetly record the incident. The State introduced videos and photographs from that recording, showing a hand—allegedly Appellant’s—on the victim’s thighs and under the victim’s undergarments, as well as the clothing that the victim and the assailant were wearing during the recording. Trial counsel sought to contest the video evidence, arguing that it could not have been Appellant in the recording, as his right hand had a distinctive injury and was missing its thumb, while the hand in question in the video had no such injury. But the victim testified that she had used the “selfie” mode of the iPad’s recording feature, which horizontally inverted the picture, which was showing Appellant’s uninjured left hand, not his injured right hand. Defense counsel also elicited testimony from law enforcement where they admitted that there was no timestamp on the video or other ways to verify the time that it took place beyond the victim’s sworn statements. That said, the State also introduced a pair of distinctive pajama pants belonging to Appellant that matched the pajama pants the victim’s assailant was wearing in the video. Thus, while counsel tried to cast doubt on the video, the jury likely found it to be overwhelming evidence of guilt. The postconviction court correctly determined that trial counsel effectively cross-examined the witnesses concerning the authenticity of the video

without utilizing an expert witness. *See State v. Reichmann*, 777 So. 2d 342, 355 (Fla. 2000) (finding that trial counsel was not ineffective where counsel's cross-examination demonstrated the same weaknesses in the State's witness's testimony that an expert witness would have pointed out). Appellant cannot demonstrate a reasonable probability that use of an electronic imaging expert would have changed the outcome of the trial.

Appellant's seventh claim alleges cumulative deficiency by trial counsel. Because Appellant's other claims were facially insufficient, the trial court correctly denied this claim as well.

Christopher J. Hranek, pro se, Appellant.

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