

Third District Court of Appeal

State of Florida

Opinion filed July 22, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1095
Lower Tribunal No. 11-12433

Yasell Sosataquechel,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Cristina Miranda,
Judge.

Law Offices of Michelle Walsh, P.A., and Michelle Walsh, for appellant.

Ashley Moody, Attorney General, and Christina L. Dominguez, Assistant
Attorney General, for appellee.

Before SCALES, HENDON and LOBREE, JJ.

SCALES, J.

Yasell Sosataquechel (“the defendant”) appeals a May 9, 2019 order denying,
after an evidentiary hearing, his Florida Rule of Criminal Procedure 3.850 motion

alleging ineffective assistance of trial counsel. The postconviction motion sought, in part, to vacate the defendant's plea to second-degree murder with a deadly weapon based on allegations that the defendant's trial counsel was ineffective in failing to advise him that self-defense was a possible defense to the charge. Because the evidence presented at the evidentiary hearing conducted below did not support a viable self-defense claim, we agree with the lower court that trial counsel's performance in this case was not deficient, and we therefore affirm the May 9, 2019 order.

I. RELEVANT FACTS AND PROCEDURAL BACKGROUND

A. The defendant's plea and subsequent rule 3.850 motion

After stabbing his wife to death in May 2011, the defendant pled guilty to second-degree murder with a deadly weapon in May 2013. At the plea colloquy hearing, the defendant acknowledged that he had "the opportunity to discuss the facts and defense in the case" with his public defender, Brian McDonald.¹ On June 3, 2013, pursuant to the terms of a plea agreement with the State, the trial court sentenced the defendant to forty years in prison.

On April 29, 2015, the defendant filed a *pro se* rule 3.850 motion alleging three separate grounds of ineffective assistance of trial counsel. The three grounds

¹ Mr. McDonald was the third public defender appointed to represent the defendant in this case. The record is unclear as to when Mr. McDonald's representation of the defendant began.

alleged therein were that the defendant's public defender had: (i) "failed to inform him that he could have presented a defense of self-defense" against the charge of second-degree murder with a deadly weapon; (ii) misadvised the defendant to reject an earlier plea offer of thirty years in prison; and (iii) failed, at the time the defendant entered his plea, to inform the trial court that the defendant "was under psychiatric treatment which included prescribed psychotropic medications."

With respect to the first claim of ineffective assistance (failure to inform the defendant of the possible defense of self-defense), the rule 3.850 motion alleged, in relevant part: (i) "[d]uring the two year period awaiting trial, Defendant was never interviewed concerning the incident that led to his arrest by anyone"; (ii) "Defendant's attorney never questioned him concerning his state of mind although he was visiting him in the psychiatric wing of the jail"; (iii) "Defendant's attorney never questioned him in any effort to prepare a possible defense"; (iv) "[e]very time the Defendant met with his attorney, the only subject discussed was the attorney relating the State's plea offer"; and (v) had the defendant been aware that self-defense was a viable defense to the second-degree murder charge, the defendant would not have entered a plea and would have gone to trial.

Attached to the postconviction motion were the defendant's affidavit and a copy of the plea colloquy transcript. The affidavit set forth the defendant's detailed account of his wife's death, averring that the wife originally had possessed, and was

the initial aggressor with, the knife. According to the defendant, the wife had attacked him with the knife and stabbed him multiple times; whereupon, the defendant disarmed the wife and killed her with the same knife. Then, purportedly out of grief and because he was experiencing severe pain, the defendant “decided to hurry up the dying process” and “started cutting [himself],” figuring that if “[he] cut [his] veins [he] would hurry up and bleed out.”

The trial court denied the rule 3.850 motion without an evidentiary hearing. On appeal, this Court affirmed the denial of the second and third grounds raised in the postconviction motion, but reversed the denial of the first ground and “remand[ed] for an evidentiary hearing on the claim that counsel did not discuss the defense of self-defense with Sosataquechel.” Sosataquechel v. State, 246 So. 3d 497, 499 (Fla. 3d DCA 2018) (concluding that the defendant’s “affirmative answer to the [trial] court’s plea colloquy question about whether he had an adequate opportunity to discuss the facts of the case and defenses thereto does not adequately resolve his present claim as to the defense of self-defense”) (“Sosataquechel I”)

B. The evidentiary hearing on remand

On remand, the trial court conducted a nearly five-hour evidentiary hearing on the lone, remaining ineffective assistance of counsel claim, at which the defendant was represented by private counsel. Just two witnesses testified at the

evidentiary hearing: the defendant and his public defender, attorney Brian McDonald.

1. The defendant's testimony

The defendant testified first. The defendant claimed on direct examination that he had met with Mr. McDonald on just one occasion, about a year to a year and a half after his arrest, when the defendant was in custody in the psychiatric ward of the county jail. During this lone visit with Mr. McDonald, the defendant “did not pay attention” and “did not have the abilities to listen to [Mr. McDonald]” because the defendant was purportedly taking medication for an undefined “condition” that was not mental illness. The defendant also stated that he did not speak or understand English well at the time and that he requested an interpreter. The defendant insisted that Mr. McDonald had never discussed self-defense with him during their single conversation. The only thing the defendant remembered discussing with Mr. McDonald was the defendant taking a plea. The defendant was not asked at the evidentiary hearing whether the defendant had ever discussed the facts of the case with his two, prior court-appointed attorneys.

The defendant then gave a detailed account about what, according to the defendant, transpired at his wife's apartment on May 11, 2011. The defendant's account of the events was largely consistent with his affidavit attached to his rule 3.850 motion. The defendant testified that his wife had originally possessed the

knife, that she was the aggressor and that she had stabbed him multiple times. During his testimony, the defendant was shown photographs of the crime scene and photographs of the defendant depicting his condition while he was a patient at Jackson Memorial Hospital. These photographs were admitted into evidence. The trial court refused to permit any medical records from Jackson Memorial Hospital to be introduced at the hearing because they were not properly authenticated. The lower court did, however, permit the defendant to testify about the nature and extent of his injuries. In particular, the defendant stated that the wife had stabbed him in the stomach and the heart, and that the wife had also cut his finger.

On cross-examination, the defendant was shown crime scene photographs depicting the wife's wounds, that were admitted into evidence. The defendant conceded that he had stabbed his wife twice in the stomach and twice in the back, but claimed that he could not remember any further details because, at the time he stabbed her, he was in immense pain.

2. The public defender's testimony

The defendant's public defender testified next. Mr. McDonald testified that he is currently an assistant state attorney for the State of Florida. Prior to that, he was a public defender in Miami for thirty-five years. In his time as a public defender, Mr. McDonald worked in the capital division for twenty-one years and handled fifty first-degree murder trials, including fifteen trials where the death penalty was

sought. Mr. McDonald was the third court-appointed attorney assigned to handle the defendant's case. Contrary to the defendant's testimony, Mr. McDonald stated that he had numerous discussions with the defendant prior to the defendant entering his plea to second-degree murder.

The first time Mr. McDonald met with the defendant was in the psychiatric ward of the county jail. Mr. McDonald was aware that the defendant was on medication at the time, but Mr. McDonald does not recall anything specific about the defendant's appearance. Mr. McDonald stated the defendant spoke and understood English with no difficulty and never requested an interpreter. Mr. McDonald stated that he discussed the details of the case with the defendant during their conversations. Mr. McDonald then proceeded to testify to the substance of those discussions at the hearing.

The defendant told Mr. McDonald that the defendant's wife had left him and moved to Miami from Oklahoma with her two minor children. The defendant believed that his wife was having an affair with another man, having tracked the location of his wife's cellular telephone via Google maps. The defendant bought a one-way airline ticket to Miami from Oklahoma to "surprise" her, originally with the intent to win back her affection. But, when the defendant went to a Miami-area Walmart to buy her flowers, the defendant ended up buying a set of knives. At that point, the defendant's plan to "surprise" his wife had gone from him trying to win

her back to the defendant planning on hurting himself in front of her. When he arrived at the wife's apartment, the defendant told his wife that they "needed some time apart" and then "he stabbed her and tried to kill himself."

The defendant never informed Mr. McDonald that the wife had possessed the knife, had acted aggressively toward him or directed any acts of physical violence toward him. When Mr. McDonald asked the defendant how he had sustained his injuries, the defendant told Mr. McDonald that the defendant had injured himself. The defendant further conveyed to Mr. McDonald that "[h]e was upset that he had done this thing, he was very sorrowful, . . . and that he was responsible." Mr. McDonald stated that he never discussed self-defense with the defendant because "[the defendant] never brought it up, and the facts of the case weren't consistent with bringing it up."

In preparing for the case, Mr. McDonald reviewed the defendant's case file from the public defender's office. Mr. McDonald testified that "the scenario [the defendant] laid out to me was essentially [] what was in the notes of the previous interviews" with the defendant's prior court-appointed attorneys. On cross-examination, defense counsel inquired about one of the notes taken by prior defense counsel, which stated that the defendant had claimed that he and the wife fought over a knife and "she stabbed him in the heart." Mr. McDonald explained that because the defendant did not tell Mr. McDonald that the wife had fought him or

that she had stabbed him in the heart with a knife, Mr. McDonald asked the defendant about the note made by prior defense counsel. Mr. McDonald testified that “[w]hen we discussed that notation, [the defendant’s] response was in connection with her leaving him, and her being with another man. And that’s what he meant by her stabbing him in the heart.”

3. The trial court denies the ineffective assistance of counsel claim and enters the challenged order

Following the testimony of the defendant and Mr. McDonald, the trial court concluded that Mr. McDonald’s representation had not been deficient. In reaching its decision, the trial court set forth a detailed explanation encompassing seven pages of transcript. The trial court rejected, as unsupported, defense counsel’s arguments that, due to the defendant’s medication, either (i) the defendant was unable to communicate with Mr. McDonald, or (ii) Mr. McDonald had reason to question the defendant’s mental capacity. The trial court determined that the defendant understood everything explained to him, in English, by Mr. McDonald, despite there being no translator present.

The trial court found that Mr. McDonald had discussed the underlying facts of the case with the defendant prior to engaging in plea discussions with him. The trial court accepted, as true, Mr. McDonald’s testimony as to what the defendant told him had taken place on May 11, 2011, setting forth its factual findings in great detail. Given Mr. McDonald’s understanding of the facts, as related to him by the defendant

during their conversations, the trial court held that “[r]equiring Mr. McDonald in this case to discuss self-defense with his client would be akin to asking [the defendant] to change his testimony.” Finding that self-defense was not a viable defense based on the underlying facts and circumstances of the case, the trial court determined that Mr. McDonald was under no obligation to discuss self-defense with the defendant, and therefore, the trial court entered the challenged order denying the ineffective assistance of counsel claim.

II. ANALYSIS²

Where the defendant’s postconviction motion seeks to vacate the defendant’s plea based on defense counsel’s alleged failure to inform the defendant of a viable defense to the charged crime, the defendant must establish both that defense counsel’s performance was deficient and that, but for the deficient performance, the defendant would not have pleaded guilty and would have insisted on going to trial. See Grosvenor v. State, 874 So. 2d 1176, 1179 (Fla. 2004) (citing Hill v. Lockhart, 474 U.S. 52, 58-59 (1985)). “Counsel’s effectiveness is determined according to the totality of the circumstances.” Id. at 1181.

² In an appellate court’s review of the denial of a claim of ineffective assistance of trial counsel after an evidentiary hearing, the trial court’s factual findings are entitled to deference if supported by competent, substantial evidence. See Arbelaez v. Sate, 898 So. 2d 25, 32 (Fla. 2005). The trial court’s legal conclusions are reviewed *de novo*. Id.

“Judicial scrutiny of counsel’s performance must be highly deferential.” Strickland v. Washington, 466 U.S. 668, 689 (1984). “[A] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” Id. To this end, as is pertinent in this case, “the viability of a defense is relevant to determine whether counsel performed deficiently in failing to inform the defendant about that defense.” Grosvenor, 874 So. 2d at 1182.

Here, the trial court’s detailed factual findings – which accept, as true, Mr. McDonald’s hearing testimony – are supported by competent, substantial evidence. Based on our deference to the trial court’s factual findings, and our independent review of the trial court’s legal conclusions with respect to those factual findings, we conclude that Mr. McDonald’s performance was not deficient. The record supports Mr. McDonald’s decision not to discuss self-defense with the defendant prior to engaging in plea discussions with him.³ The evidence presented at the evidentiary hearing conducted below simply did not support a viable self-defense claim. See Evans v. State, 946 So. 2d 1, 11 (Fla. 2006) (“[E]ven if the diminished capacity defense were viable, Evans cannot establish that counsel was ineffective

³ Because we conclude that defense counsel’s performance was not deficient, we need not, and therefore do not, address whether the defendant satisfied his burden of demonstrating that he would not have pleaded guilty and would have gone to trial.

for failing to raise it because it would have been inconsistent with Evans' theory that the shooting was an accident."); Dufour v. State, 905 So. 2d 42, 53 (Fla. 2005) ("Dufour failed to establish that the [voluntary intoxication] defense was viable because he could not demonstrate that he was actually intoxicated at the time of the offense.").

In this appeal the defendant argues that Mr. McDonald should not have believed anything the defendant told him about what occurred on May 11, 2011, because the defendant was medicated at the time. While the defendant may have been medicated when he first spoke with Mr. McDonald, no evidence was introduced, or even proffered, below to establish that the medication and/or the dosage of medication he was receiving had any side effects that could have impaired the defendant's cognitive abilities. In any event, the trial court clearly rejected the defendant's professed selective recollection of his discussion with Mr. McDonald in favor of accepting Mr. McDonald's hearing testimony.

As to the defendant's wounds, the trial court properly refused to admit any medical records from Jackson Memorial Hospital for lack of proper authentication. See Brock v. State, 676 So. 2d 991, 996 (Fla. 1st DCA 1996) (recognizing that a medical record may be admitted as a business record where the proper predicate is laid). Therefore, other than the defendant's general testimony as to where he had been injured and some photographs depicting the defendant's external injuries, the

extent and severity of the defendant's internal injuries was not demonstrated in the lower proceeding.

There was also no expert testimony, affidavit, or report – be it from a forensics examiner, a medical examiner or other qualified individual – introduced below to support the defendant's characterizations of the photographs. “A trial court may not rely on argument by counsel to make factual determinations.” State v. Jones, 30 So. 3d 619, 622 (Fla. 2d DCA 2010) (rejecting defense counsel's assertion that a medical test was not ordered for medical reasons because counsel provided no evidence to support the assertion).

Finally, the defendant relies heavily upon a hearsay notation made in his case file by his prior court-appointed counsel stating that the defendant claimed he and his wife fought over a knife and “she stabbed him in the heart.” Prior counsel, however, was not called to testify at the evidentiary hearing. Mr. McDonald explained that he went over this case notation with the defendant and that the defendant clarified that his statement to his prior counsel was metaphorical. Moreover, in pointing out the purported discrepancy, the defendant admits that he had discussions with an attorney about the facts of the case – which negates his rule 3.850 allegation that “[d]uring the two year period awaiting trial, Defendant was never interviewed concerning the incident that led to his arrest by anyone.”

III. CONCLUSION

Consistent with this Court's instructions in Sosataquechel I, the trial court conducted an evidentiary hearing on the defendant's claim that his counsel was ineffective in failing to inform the defendant that he could claim self-defense as a possible defense against the charge of second-degree murder with a deadly weapon. The trial court denied the defendant's claim, determining that the underlying facts – as related by the defendant to his trial counsel – did not give rise to a viable self-defense claim. The trial court's factual determinations are supported by competent, substantial evidence. In reviewing the trial court's legal conclusion's *de novo*, we agree with the lower court that trial counsel's performance in this case was not deficient. We, therefore, affirm the May 9, 2019 order.

Affirmed.