FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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No. 1D20-3285

DUDLEY ALLEN HICKS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Linda L. Nobles, Judge.

July 6, 2021

PER CURIAM.

AFFIRMED.

B.L. THOMAS, ROBERTS, and LONG, JJ., concur.

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

Rec'd 6th day 7/9/21

Dudley Allen Hicks, pro se, Appellant.

Ashley Moody, Attorney General, and Barbara Debelius, Assistant Attorney General, Tallahassee, for Appellee.

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

DUDLEY ALLEN HICKS, **Case No.: 2016 CF 001114A**

Defendant. **Div.: "A"**

ORDER DENYING DEFENDANT'S AMENDED MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE is before the Court on Defendant's *pro se* Amended Motion for Postconviction Relief, filed August 28, 2020. Having reviewed the motion, the record, and applicable law, the Court finds that the motion should be denied.

After a jury trial, Defendant was found guilty of one count of sexual battery (victim less than 12 years old). On February 16, 2017, the Court sentenced Defendant to life in prison.[1] The First District Court of Appeal affirmed the judgment and sentence by mandate and opinion filed on September 7, 2018. A previously filed motion for postconviction relief was struck with leave granted to file an amended motion on July 7, 2020.[2]

In this motion, Defendant asserts two claims of ineffective assistance of counsel: 1) his counsel was ineffective for failing to request a competency hearing and allowing him to be tried and convicted while incompetent; and 2) his counsel was ineffective for allowing him to reject a plea offer while incompetent.

As a general principle, to prevail on a claim of ineffective assistance of counsel, a defendant

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1 Attachment 1, judgment and sentence.
2 Attachment 2, order.

must demonstrate that 1) counsel's performance was deficient, and 2) there is a reasonable probability that the outcome of the proceeding would have been different had counsel not been deficient. *See Torres-Arboleda v. Dugger*, 636 So. 2d 1321, 1324 (Fla. 1994), *construing Strickland v. Washington*, 466 U.S. 668 (1984). Thus, there is a two-part inquiry: counsel's performance and prejudice.

> In reviewing counsel's performance, the court must be highly deferential to counsel, and in assessing the performance, every effort must "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."

Spencer v. State, 842 So. 2d 52, 61 (Fla. 2003), *quoting Strickland*, 466 U.S. at 689.

Defendant bears the burden of showing that counsel's errors were "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland*, 466 U.S. at 687. There is a "wide range of professionally competent assistance" that passes this constitutional muster. *Bertolotti v. State*, 534 So. 2d 386, 387 (Fla. 1988). Furthermore, there is a "strong presumption that counsel has rendered adequate assistance and made all significant decisions in the exercise of *reasonable professional judgment* with the burden on claimant to show otherwise." *Blanco v. Wainwright*, 507 So. 2d 1377, 1381 (Fla. 1987), *quoted in Bertolotti*, 534 So. 2d at 387 (emphasis added).

Even if Defendant's counsel fell below such standards, Defendant would not automatically prevail. Defendant must also meet the prejudice prong of the *Strickland* test.[3] For Defendant to prevail on this point, he must demonstrate that there is a "reasonable probability that, but for the deficiency, the result of the proceeding would have been different." *Spencer*, 842 So. 2d at 61.

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3 There is no prescribed sequence for the *Strickland* analysis, but if a defendant does not carry his burden on one prong, then the Court need not consider the other prong. *See Strickland*, 466 U.S. at 697.

Moreover, "[a] court considering a claim of ineffective assistance of counsel need not determine whether counsel's performance was deficient *when it is clear that the alleged deficiency was not prejudicial*." *Torres-Arboleda*, 636 So. 2d at 1324 (emphasis added). In other words, Defendant must demonstrate a "probability sufficient to undermine confidence in the outcome." *Spencer*, 842 So. 2d at 61. With these principles in mind, the Court will address Defendant's claims.

In his first claim, Defendant asserts that his counsel was ineffective for failing to request a competency hearing and allowing him to be tried and convicted while incompetent. He argues that "there were ample facts and circumstances to alert counsel that Mr. Hicks was incompetent during all stages of his criminal prosecution." He notes that the warrant affidavit contains a statement that Defendant had been diagnosed with a personality and bipolar disorder, and that his "mental health history alone should have prompted defense counsel to request a hearing." He also notes that "defense counsel was aware that there was something seriously wrong with [Defendant] mentally, just by way of conversing with him. When speaking with [Defendant], [Defendant] appears spaced out and at times does not make any sense. In mid-conversation, [Defendant] will suddenly become emotionally distraught." Had he been properly evaluated, Defendant alleges that the examining doctors would have rendered a report detailing how he "did not have the ability to assist[] his attorney in [preparing] a viable defense or sufficiently consult with counsel." He concludes that he was tried while legally incompetent.

In his related second claim, Defendant asserts that his counsel was ineffective for allowing him to reject a plea offer while incompetent. Defendant states he was offered a plea agreement of 15 years in prison, followed by 15 years on probation, which he rejected. Defendant argues that "allowing [him] to reject the plea while counsel harbored a doubt as to his competence amounted to deficient performance."

The standard for an ineffective assistance of counsel claim regarding the mental competency of a defendant is as follows:

> To satisfy the deficiency prong based on counsel's handling of a competency issue, the postconviction movant must allege specific facts showing that a reasonably competent attorney would have questioned competence to proceed. . . . Conclusory allegations of incompetency are not enough to warrant an evidentiary hearing. *See Atwater v. State*, 788 So. 2d 223, 229 (Fla. 2001). "[N]ot every manifestation of mental illness demonstrates incompetence to stand trial; rather, the evidence must indicate a present inability to assist counsel or understand the charges." *Card v. Singletary*, 981 F. 2d 481, 487–88 (11th Cir. 1992). "[N]either low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial." *Medina* [*v. Singletary*, 59 F. 3d 1095, 1107 (11th Cir. 1995)].
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> The prejudice standard that applies to a typical claim of ineffective assistance of counsel, whether a reasonable probability exists that the outcome of the proceeding would differ, is ill-suited to a claim of alleged incompetency. The issue is not whether the outcome of the trial would have differed. . . . [or] whether, had counsel acted differently, the court would have been required to hold a competency hearing under [Fla. R. Crim. P.] Rule 3.210. The focus of the prejudice inquiry is on actual prejudice, whether, because of counsel's deficient performance, the defendant's substantive due process right not to be tried while incompetent was violated. In order to establish prejudice in a properly raised ineffective assistance of counsel claim, the postconviction movant must . . . **set forth clear and convincing circumstances that create a real, substantial and legitimate doubt as to the movant's competency**. *Cf. Luckey v. State*, 979 So. 2d 353, 354 (Fla. 5th DCA 2008) (holding that ineffective assistance of counsel claim was insufficient where defendant had not alleged actual incompetency); *see also Gillis v. State*, 807 So. 2d 204 (Fla. 5th DCA 2002); *Baker v. State*, 404 So. 2d 1151 (Fla. 5th DCA 1981) (recognizing that conclusory and uncorroborated postconviction claims alleging incompetency were insufficient to warrant an evidentiary hearing.).

Thompson v. State, 88 So. 3d 312, 319–20 (Fla. 4th DCA 2012) (emphasis added).

The benchmark for incompetence is "whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings." Fla. R.

Crim. P. 3.211(a)(1).

Defendant has pointed to no specific facts showing that a reasonably competent attorney would have questioned his competence to proceed, nor does he set forth clear and convincing circumstances that create a real, substantial, and legitimate doubt as to his competency. Consequently, Defendant's claim is facially insufficient. In addition, it bears noting that the record demonstrates that Defendant was an active and coherent participant in his defense. He personally inquired of the Court on several occasions, and testified logically in his own defense. He objected to the conditions at the jail, to the fact that a different judge presided for a portion of his trial, and to certain language used during testimony. At the conclusion of his trial, he testified articulately on his own behalf.[4] In short, notwithstanding the facially insufficiency of the claims, nothing in the record before the Court suggests that Defendant was incompetent during the course of his criminal proceedings.

Accordingly, it is, hereby,

ORDERED AND ADJUDGED that Defendant's Amended Motion for Postconviction Relief is **DENIED.** Defendant has thirty (30) days from the rendition of this order to file notice of appeal, should he so choose.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida.

eSigned by CIRCUIT COURT JUDGE LINDA L. NOBLES
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4 Attachment 3, trial transcript excerpts.