

2021 IL App (2d) 190670-U
No. 2-19-0670
Order filed December 2, 2021

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CF-1765
)	
ERIC N. CASTILLO,)	Honorable
)	Patricia S. Fix,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing third-stage postconviction petition where facts did not support amendment of petition to make claim that trial counsel was ineffective for not arguing, in seeking a compulsion instruction, that after abolishment of the death penalty, compulsion was an available defense for first degree murder. Affirmed.

¶ 2 Following a jury trial, defendant was convicted of the 2011 first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)) of David Campbell and was sentenced to 35 years' imprisonment. Codefendants Jose Horta, Roberto Guzman, and Nadia Palacios were also convicted and imprisoned. On appeal from the dismissal of his third-stage postconviction petition, defendant

argues that his trial counsel, in seeking a compulsion instruction, failed to argue that, after the abolishment of the death penalty, compulsion was an available defense for first degree murder.

¶ 3

I. BACKGROUND

¶ 4 Defendant filed a motion *in limine* to permit evidence of threats made to him before and after the commission of the offense. The trial court determined that defendant was essentially raising compulsion and asked counsel whether compulsion was allowed in first-degree murder. Counsel answered that it was not. In ruling on the motion, the court reiterated that compulsion was not a defense in first-degree murder. Prior to trial, when counsel stated that he had filed the affirmative defense of compulsion, the court stated that it had explained that compulsion was not a defense to first degree murder, and counsel responded that he understood. Following trial, counsel for defendant tendered a compulsion instruction, without argument. The court refused to give it to the jury, stating that he believed “the law is clear as to the issue of compulsion.”

¶ 5 The jury found defendant guilty of first-degree murder accompanied by brutal and heinous conduct but not guilty of a firearm enhancement. Defendant filed a motion for new trial, in which he alleged in part that the trial court erred in not giving the jury instruction on compulsion. The issue was not discussed at the hearing. After denying the motion for new trial, the court sentenced defendant to 35 years in prison. On appeal, this court affirmed defendant’s conviction but vacated the \$250.00 public defender fee portion of his sentence; the sentence was affirmed in all other aspects. See *People v. Castillo*, 2016 IL App (2d) 140529.

¶ 6 Defendant filed a *pro se* postconviction petition, which included claims that co-defendant Guzman threatened him and his family, that he was deceived and compelled into participating in the murder, and that, had he not been advised by his counsel not to testify, he would have been able to describe “why his actions were justified pursuant to the affirmative defense that he raised.”

The trial court found a gist of a constitutional claim and moved the cause to the second stage. The public defender's office was appointed to defend defendant, and a supplemental petition for postconviction relief was filed.

¶ 7 At the evidentiary hearing on the third-stage petition, defendant argued that his counsel was ineffective for, *inter alia*, advising defendant not to testify and for failing to call certain witnesses at trial, including co-defendant Horta. Defendant and Horta testified regarding the issue of compulsion. The trial court found that counsel was not ineffective and that the evidence presented did not rise to the level of compulsion. Defendant's motion for reconsideration was denied, and this appeal followed.

¶ 8 The evidence relevant to the murder and the issue of compulsion presented at trial and at the postconviction hearing is related below.

¶ 9 II. ANALYSIS

¶ 10 A criminal defendant enjoys a constitutional right to effective counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 104 (1984). To succeed upon a claim that counsel provided ineffective assistance, a defendant must show both that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's poor performance, there is a reasonable probability that the result of the proceedings would have been different. *Strickland*, 466 U.S. at 687 (trial counsel's representation must be both defective and prejudicial to the defense). To establish deficient performance, a defendant must overcome a strong presumption that counsel's actions were the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 342–43 (2011). A reviewing court, however, "may proceed directly to the second part of the *Strickland* test and, if it does not find the requisite prejudice, may

decide the claim without analyzing the effectiveness of counsel's representation." *People v. Humphries*, 257 Ill. App. 3d 1034, 1042 (1994).

¶ 11 A defendant bears the burden of proving by a preponderance of the evidence the substantial deprivation of a constitutional right. *People v. Coleman*, 2013 IL 113307, ¶ 92. Where fact finding and credibility determinations are made at the third-stage hearing in a postconviction proceeding, the trial court's decision will not be reversed unless it is manifestly erroneous. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). The issue of compulsion is a question that must be resolved by the trier of fact, as the trier of fact determines the credibility of witnesses and weighs their testimony; as a result, "this court will not set aside such a judgment unless the proof is so unreasonable, improbable or unsatisfactory as to create a reasonable doubt." *People v. Nurse*, 34 Ill.App.3d 42, 46-47 (1975).

¶ 12 Defendant argues that his trial counsel, in seeking a compulsion instruction, was ineffective in that he failed to argue that, after the abolishment of the death penalty, compulsion was an available defense for first degree murder. According to defendant, a compulsion defense "is provided by statute," namely section 7-11(a) of the criminal code (720 ILCS 5/7-11(a) (West 2011)), which states:

"(a) A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct that he or she performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he or she reasonably believes death or great bodily harm will be inflicted upon him or her, or upon his or her spouse or child, if he or she does not perform that conduct."

Campbell's murder occurred on July 5, 2011. Because the death penalty was abolished effective July 1, 2011 (725 ILCS 5/1/119-1 (West 2011)), Campbell's murder was not punishable by death; therefore, defendant argues, compulsion was an available defense to defendant.

¶ 13 The State responds that (1) the trial court correctly found that a defense of compulsion is unavailable to one charged with murder, and (2) there was no evidence introduced at trial to support an affirmative defense instruction. The State cites *People v. Gleckler*, 82 Ill. 2d 145, 157 (1980) (“[t]he defense of compulsion *** , as a matter of legislative intent, is unavailable to one charged with murder,” citing the legislature’s “command” that compulsion is one mitigating factor to be weighed in imposing the death penalty); *People v. Mosley*, 299 Ill. App. 3d 725, 729 (1998), *vacated for other reasons*, 183 Ill. 2d 586 (1999) (“The fact that a defendant is not eligible for the death penalty does not enable him to assert a compulsion defense in a prosecution for murder.”); *People v. Serrano*, 286 Ill. 2d 586, 490-02 (compulsion is not a defense to murder but may be a defense to felony murder); and *People v. Sims*, 74 Ill. App. 3d 231, 267 (2007) (“although a compulsion defense is generally not available to a defendant prosecuted for murder, the defense may be raised in a prosecution for felony murder”). In reply, defendant notes that the State’s primary case, *Gleckler*, was decided when the death penalty was available; the other cases are distinguishable; and his argument is based on the plain language of the compulsion statute.

¶ 14 We need not decide whether the compulsion defense was legally available to defendant, nor whether counsel’s performance fell below an objective standard of reasonableness. Defendant has not shown the requisite prejudice, that is, a reasonable probability that the result of the proceedings would have been different had counsel argued in the trial court that, under the statute, compulsion was an available defense for first degree murder. *Strickland*, 466 U.S. at 687; *Humphries*, 257 Ill. App. 3d at 1042.

¶ 15 The defense of compulsion requires “an impending threat of great bodily harm together with a demand that the person perform a specific criminal act, and a threat of future injury is not enough to raise the defense.” *Humphries*, 257 Ill. App. 3d at 1044; *People v. Robinson*, 41 Ill.App.3d 526, 529 (threat of future injury “is not sufficient to excuse criminal conduct”). “Thus, the evidence must show that the threat against defendant would soon have been carried out if he had not followed the orders of the compeller.” *People v. Collins*, 2016 IL App (1st) 143422, ¶ 35. Additionally, the compulsion defense is not available if defendant had an ample opportunity to withdraw from participation in the offense but failed to do so. *People v. Scherzer*, 179 Ill. App. 3d 624, 645–46 (1989).

¶ 16 Defendant concedes that the facts available at his trial did not support an instruction on compulsion. Codefendant Alex Rivera testified that defendant participated in a retaliation for a kidnapping of codefendants Roberto Guzman (a drug dealer), Nadia Palacios, and Michael Castellanos from Guzman’s car. One kidnapper put a butter knife into Palacio’s vagina. The kidnappers eventually let them go; Guzman wanted to find out who they were and get even.

¶ 17 Rivera was the middleman for drug deals between David Campbell and Guzman. Guzman told Rivera to take Campbell to a body shop for a drug deal. When Rivera and Campbell arrived, Palacios was outside and, according to Rivera, locked the gate behind them. Codefendant Jose Horta, who sold drugs for Guzman, and an older Mexican man were also in the office. Defendant came from behind a door, bear-hugged Campbell and held him down on the couch while the Mexican man zip-tied his hands and feet. Defendant hit Campbell in the chest with his fists and in the head and ribs with a hammer and asked Campbell, “who sent you?” As defendant held Campbell down, with a knee on his chest, the Mexican man put a plastic grocery bag over Campbell’s head. Defendant held the bag in place while he was holding Campbell down.

¶ 18 Palacios said that she knew it was Campbell who had assaulted her. She got a blow torch and applied it to Campbell's penis and leg; Campbell's leg twitched, but he made no sound. Then, the Mexican man put another plastic bag over Campbell's head and zip-tied the bags tight while defendant held Campbell down. According to Rivera, defendant never backed away or said stop, and nobody directed him what to do. At about 6' 3" tall and weighing over 300 pounds, defendant was the largest person in the room;. He did not hesitate to act, and his demeanor was "normal" throughout the process, including the next day.

¶ 19 Palacios told Rivera to go with her, and she drove them to Indiana in Campbell's car where they wiped the car down with bleach. Defendant and Guzman picked up Palacios and Riviera and drove to a hotel in Kenosha, Wisconsin. There, Guzman passed out money to defendant, Horta, Palacios, and Rivera. Rivera further testified that he left the country because he was scared of Guzman, defendant, and Campbell's family. He was testifying as part of a plea agreement; he had pleaded guilty to obstructing justice.

¶ 20 The detective who arrested defendant a year after the crime testified about defendant's interrogation, in which he identified the other people who were in the body shop that day, including the Mexican man, whose name was "Paisa." Defendant thought that Campbell was being brought to the garage for a drug deal and was going to be either beaten or talked to. When Campbell walked in, Paisa gave defendant a look, which was a signal for defendant to grab Campbell from behind. Paisa began to hit Campbell with his fists and a small hammer. While defendant was holding Campbell, Paisa tied Campbell's hands and legs with duct tape. Defendant continued to hold Campbell while Paisa put bags on his head, taping them around the neck. Horta took money out of Campbell's pockets. Defendant indicated that both Palacios and Paisa asked Campbell about

the kidnapping and assault of Palacios. Defendant also indicated that Palacios pulled Campbell's pants down and burned his genitals and legs with a blowtorch.

¶ 21 The evidence presented at the evidentiary hearing also fails to support an instruction on compulsion. Defendant's "new evidence" was the affidavit and testimony of co-defendant Horta, who was serving a sentence in the same prison as defendant. Horta's credibility was effectively impeached on cross-examination, and his testimony deserves little weight.

¶ 22 Defendant's own testimony was offered as corroboration of Horta's testimony. Defendant testified that after Guzman gave Horta an "empty" gun to scare Campbell and told him to take money out of Campbell's pocket, defendant and Horta told Guzman that they did not want to be involved. Guzman told them that they "didn't have a choice." Defendant claimed that Guzman then threatened him and his family and stated that he would have Paisa kill him if he did not help. Guzman left, leaving Palacios and Paisa in charge.

¶ 23 Defendant did not see that either Guzman or Paisa had a gun; he had previously seen Guzman with guns "a few times" and "assumed" that they had guns the day of the murder because they were threatening to shoot him. The first time that defendant claimed to see anyone with a loaded gun was after the murder, when he picked up Guzman at his girlfriend's house. According to defendant, Guzman drew a gun and threatened to kill defendant and his family if he told anyone about what had happened.

¶ 24 Other than the "empty gun," the only weapon that defendant saw during the murder was the hammer that Paisa used to beat Campbell. Defendant stated that, when he let Campbell go after patting him down, Paisa swung the hammer at him, nicking his hand. Defendant further claimed that he kept telling Paisa to stop, and Paisa said, "If you don't shut up, I'm going to kill you, I'm going to shoot you." Defendant was afraid of Paisa, despite his own greater size. Nevertheless,

when Paisa told defendant to help carry Campbell's body to an SUV, saying again that he would be killed if he did not help, defendant did not help. Paisa did not harm defendant but "got frustrated" and told Horta to help him. Defendant then opened the back door of the SUV, and Paisa and Horta put the body inside.

¶ 25 Defendant testified that he did not leave the shop during the murder because he thought Paisa would hit him "a lot more times" with the hammer. He also said that he could not leave because he "didn't know if Guzman had locked the gate" from the outside when Guzman left the premises before the murder. Defendant was afraid Paisa would shoot him if he tried to leave; he never saw Paisa with a gun but "thought he probably had a gun."

¶ 26 Defendant's hearing testimony fails to show that he could have reasonably believed that he was under an imminent threat of great bodily harm or that he was incapable of leaving the situation. Defendant's claim that he participated in the murder because he feared that he would be shot if he did not participate was based on speculation regarding the presence of guns. Other threats of harm both to himself and his family involved injury in the future, if, for example, he told anyone about the murder:

¶ 27 Similarly, his claim that he could not leave the situation was based on his fear that Paisa was armed and would shoot him if he tried to leave or that the gate was locked. Both of these fears, however, were founded on speculation. And at least one piece of defendant's testimony belied any fear that he would be harmed. When defendant did not follow Paisa's demand that he help carry the victim's body to the SUV, there were no consequences: Paisa merely "got frustrated" and ordered Horta to help him.

¶ 28 Thus, defendant's affidavit and hearing testimony alone, without credible corroboration, are insufficient to sustain his petition for a new trial on the issue of compulsion. See *People v.*

Velasco, 2018 IL App (1st) 161683, ¶ 118 (“if a petition advances to a third-stage evidentiary hearing, a defendant will no longer enjoy the presumption that the allegations in his petition and accompanying affidavits are true.” (Internal quotation marks omitted.)). Although defendant asserts that if he had testified at trial, his testimony could have supported a compulsion instruction, the record does not show that he was coerced into not testifying, or that he wanted to testify and his counsel would not allow him to do so. To the contrary, the record shows that he was thoroughly admonished regarding his right to testify and that he chose not to do so. Even if defendant had testified at trial, his postconviction hearing testimony does not indicate that a compulsion instruction would have been appropriate.

¶ 29 The evidence presented in the postconviction proceedings was not so conclusive that it would probably change the result on trial. Accordingly, defendant cannot succeed upon his claim of ineffective assistance. His counsel’s failure to tender a particular argument that compulsion was an available defense did not prejudice defendant. To establish prejudice in this case, defendant needed to show that, were the issue of compulsion to be tried before a jury, there is a reasonable probability that the jury would have acquitted defendant. *People v. Orasco*, 2016 IL App (3d) 120633-B, ¶ 28. Because defendant’s evidence fails this test, he cannot claim a substantial deprivation of his constitutional right to effective assistance of counsel. See *People v. Beck*, 295 Ill. App. 3d 1050, 1062 (1998) (In the interests of judicial economy, “[i]f the ineffective assistance of counsel claim can be disposed of on the basis that the defendant did not suffer prejudice, a reviewing court need not decide whether the claimed errors were serious enough to constitute less than reasonably effective assistance”).

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 32 Affirmed.