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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1807-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANIEL BEDFORD,

Defendant-Appellant.

Submitted April 4, 2022 – Decided April 21, 2022

Before Judges Messano and Enright.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 13-03-0681.

Joseph E. Krakora, Public Defender, attorney for
appellant (Phuong V. Dao, Designated Counsel, on the
brief).

Theodore N. Stephens II, Acting Essex County
Prosecutor, attorney for respondent (Caroline C. Galda,
Special Deputy Attorney General/Acting Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Daniel Bedford appeals from the October 13, 2020 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm, substantially for the reasons set forth in Judge Siobhan A. Teare's thorough and cogent opinion.

I.

Because we outlined the underlying facts at length in the decision resulting from defendant's direct appeal, State v. Bedford, No. A-3518-14 (App. Div. May 26, 2017) (Bedford I), we provide only a summary of the facts pertinent to this PCR appeal.

Defendant admitted at trial to fatally stabbing Kareem Montague during a drug deal in 2012. According to defendant's testimony, he, Montague, and Montague's girlfriend, Charlene Fields, were sitting in a car to conduct the drug transaction. Defendant offered Montague \$16, rather than the usual \$20 for a PCP-soaked cigarette, and Montague purportedly became "aggressive" after taking the "short" payment. Defendant contended that after the two men engaged in a physical altercation in the car, Montague pulled out a knife and lunged at him. Defendant testified that he managed to wrestle the knife away from Montague, swung it and stabbed Montague in self-defense.

Additionally, defendant stated Fields drove the car away from the scene after Montague collapsed on top of defendant while the two men were still in the car. He testified Fields stopped the car at some point and jumped out, so he drove the car for about another a minute before abandoning it on a sidewalk and running from the scene. In defendant's view, the "[o]nly thing [he] probably could have [done] better was . . . call[] the police . . . to . . . let them know . . . [his] side of the story, what happened."

Fields's account of the incident was quite different. She testified at trial that defendant entered the car without invitation, Montague looked scared, and after the two men physically fought, Montague asked her to drive away and get him to a hospital, stating "This [expletive], he stabbed me." Defendant was still in the car. Fields stated that as she was driving, defendant told her to "stop the [expletive] car," which she did. Thereafter, defendant reached for the car key, Fields exited the car, and defendant drove away with Montague in the car. Fields ran to a nearby gas station for help. After driving for about a minute, defendant left the car on the sidewalk and ran. Montague died alone in the car.

The State produced evidence at trial implicating defendant in the killing, including a surveillance video of the area near the spot where Montague's car

was abandoned that showed defendant removing and discarding a sweatshirt stained with what was subsequently identified as Montague's blood.

A jury convicted defendant of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), first-degree carjacking, N.J.S.A. 2C:15-2, fourth-degree unlawful possession of a knife, N.J.S.A. 2C:39-5(d), and third-degree possession of a knife for an unlawful purpose, N.J.S.A. 2C:39-4(d). At sentencing, the judge merged the convictions for aggravated manslaughter and possession of a knife for an unlawful purpose and sentenced defendant to concurrent prison terms of fifteen years for carjacking, twenty-five years for aggravated manslaughter, and one year on the fourth-degree offense. The sentences imposed for aggravated manslaughter and carjacking were subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

We affirmed defendant's convictions but remanded for resentencing. Bedford I, slip op. at 18. Upon resentencing, defendant received an aggregate term of twenty-three years in prison, subject to NERA. We considered defendant's appeal from his resentence on the excessive sentencing oral calendar, per Rule 2:9-11, and affirmed. State v. Bedford, No. A-5056-17 (App. Div. Jan. 9, 2019) (Bedford II); several months later, the Supreme Court denied defendant's petition for certification. 231 N.J. 150.

In August 2019, defendant filed a pro se PCR petition, in part arguing his trial counsel provided ineffective assistance (IAC). Assigned PCR counsel filed a supplemental brief in June 2020, incorporating defendant's pro se arguments and also raising IAC claims. Pertinent to this appeal, PCR counsel specifically argued trial counsel was ineffective for failing to interview and subpoena Khadidrah Grissom, Montague's former girlfriend and owner of the car in which Montague was fatally stabbed. PCR counsel argued that if Grissom was called by trial counsel to testify, "Grissom's testimony would have helped support [defendant's] argument of self-defense and helped support his testimony that the victim became aggressive with him" because Grissom gave a statement to the police the day of the stabbing, implying "the victim had a bad demeanor towards others and was difficult to deal with" and would "'get real nasty' with his customers."

Judge Teare, who also conducted defendant's jury trial in 2014, heard argument on defendant's petition in September 2020. On October 13, 2020, the judge entered an order, rejecting defendant's IAC claims and denying his petition without an evidentiary hearing. In the eleven-page opinion accompanying the judge's order, she addressed defendant's IAC claims regarding Grissom, stating:

The [c]ourt notes, while Ms. Grissom did state the decedent would get verbally nasty with customers who "shorted" him,[] a fair reading of her June 6, 2012 statement to police clearly shows that she was mourning the death of her ex-boyfriend whom she was still friendly with and that she believed him to be a gentle and sweet person. . . . Thus, this was not a witness who would necessarily provide favorable testimony that the decedent was the aggressor to support Defendant's claim of self-defense.

. . . .

[T]he court's task is to fairly assess defendant's trial counsel's decisions in the context of the State's case against the defendant and the strengths and weaknesses of the evidence available to the defense. Here, trial counsel had reason not to call Grissom to the stand, because there was no way to know what kind of witness she would be on the stand.

. . . .

This [c]ourt determines that trial counsel engaged in reasonable representation, and his representation of the Defendant-Petitioner in no way rose to a level of ineffective assistance of counsel. Petitioner has failed to show deficient performance that mandates [PCR] Instead, Petitioner points to numerous instances that illustrate trial strategy that trial counsel followed, and that Petitioner was fully aware of the strategy counsel planned to take. It is for the aforementioned reasons that Defendant-Petitioner's [PCR] Motion is hereby DENIED.

Considering her assessment of the issues raised by defendant, Judge Teare further found "a testimonial hearing is not required to adequately review the Defendant-Petitioner's arguments pertaining to his [IAC] claims."

II.

On appeal, defendant raises the following arguments:

POINT I

BECAUSE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, HE WAS PREJUDICED AND THEREFORE, HE IS ENTITLED TO [PCR], INCLUDING AN EVIDENTIARY HEARING.

- (a) Trial counsel failed to prepare for trial and subpoena Ms. Grissom's testimony at trial.

POINT II

DEFENDANT HAS MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND THUS, THE PCR COURT ERRED IN NOT GRANTING AN EVIDENTIARY HEARING.

We conclude these arguments lack merit. R. 2:11-3(e)(2). We add the following brief remarks.

"[W]here the [PCR] court does not hold an evidentiary hearing, we may exercise de novo review over the factual inferences the trial court has drawn from the documentary record." State v. O'Donnell, 435 N.J. Super. 351, 373

(App. Div. 2014) (citation omitted). Additionally, we review a PCR court's legal conclusions de novo. State v. Harris, 181 N.J. 391, 415-16 (2004) (citing Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

To succeed on a claim of ineffective assistance, defendant must establish, first, that "counsel's representation fell below an objective standard of reasonableness" and, second, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 694 (1984); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey). "[T]here is 'a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[,] [and t]o rebut that strong presumption, a defendant must establish that trial counsel's actions did not equate to 'sound trial strategy.'" State v. Castagna, 187 N.J. 293, 314 (2006) (quoting Strickland, 466 U.S. at 689). In that vein, we are cognizant that deciding which witnesses to call to the stand is "an art," and we must be "highly deferential" to such choices. State v. Arthur, 184 N.J. 307, 321 (2005) (quoting Strickland, 466 U.S. at 689, 693).

To establish a prima facie case of ineffective assistance of counsel, a defendant must present legally competent evidence rather than "bald assertions." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). The petitioner must allege specific facts sufficient to support a prima facie claim. Ibid. Such facts must be presented by the petitioner in the form of admissible evidence. Id. at 167. In short, the relevant facts must be shown through "affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Id. at 170; see also R. 3:22-10(c). And even if there is a showing that counsel was deficient, a "defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89, 158 (1997) (quoting State v. Preciose, 129 N.J. 451, 463 (1992)).

Simply raising a PCR claim does not entitle a defendant to an evidentiary hearing. Cummings, 321 N.J. Super. at 170 (citing Preciose, 129 N.J. at 462). Instead, an evidentiary hearing is required only when: a defendant establishes a prima facie case in support of PCR; the court determines there are disputed issues of material fact that cannot be resolved by review of the existing record; and the court determines that an evidentiary hearing is required to resolve the claims asserted. State v. Porter, 216 N.J. 343, 354 (2013) (citing R. 3:22-10(b)).

We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

Governed by these standards, we agree with Judge Teare that defendant failed to satisfy either prong of the Strickland/Fritz test and was unable to demonstrate a reasonable likelihood his PCR claim would ultimately succeed on the merits. Accordingly, defendant was not entitled to an evidentiary hearing.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION