

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2114-20

STATE OF NEW JERSEY,

Plaintiff- Respondent,

v.

STEVENS GUILMEUS,

Defendant-Appellant.

Submitted May 11, 2022 – Decided May 26, 2022

Before Judges Hoffman and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 18-05-0661.

Joseph E. Krakora, Public Defender, attorney for appellant (David A. Gies, Designated Counsel, on the briefs).

Lori Linskey, Acting Monmouth County Prosecutor, attorney for respondent (Monica do Outeiro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief; Andrew Smedberg, Legal Assistant, on the brief).

PER CURIAM

Defendant Stevens Guilmeus appeals from a January 4, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. After a careful review of the record and the governing legal principles, we affirm, substantially for the reasons set forth in Judge Paul X. Escandon's cogent written opinion. We add the following remarks.

On May 18, 2018, a Monmouth County grand jury returned Indictment Number 18-05-0661 charging defendant, a citizen of Haiti, with third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(2) (count one); second-degree sexual assault, N.J.S.A. 2C:14-2(c)(4) (count two); and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1) (count three). On July 16, 2018, defendant entered into a plea agreement with the State whereby he agreed to plead guilty to count three of the indictment. In exchange for defendant's guilty plea, the State agreed to dismiss the remaining counts of the indictment and to recommend a sentence of 364 days in the Monmouth County Correctional Institution, parole supervision for life (PSL), and Megan's Law registration.

At his plea hearing, defendant told the judge, under oath, that he understood that his plea would likely result in his deportation; that he had ample opportunity

to speak both with plea counsel and with a specialized immigration attorney about the impact of his plea on his immigration status; and that he did not need any additional time to speak with counsel or seek additional advice on this issue. Defendant additionally affirmed he had reviewed the entire plea form with counsel, and that the initials and signature on the form were his and were placed there to indicate that he had reviewed each page and wished to enter into the plea agreement under these terms. Defendant then provided a factual basis to support his plea.

On December 7, 2018, defendant appeared for sentencing. Prior to the imposition of sentence, defendant's immigration status and the impact of his plea were discussed. Counsel for defendant informed the court that any issues regarding defendant's status were resolved by defendant's immigration attorney. The court sentenced defendant in accordance with the plea agreement to 364 days in the county jail, Megan's Law registration, and PSL, along with all mandatory fines and penalties. Also pursuant to the plea agreement, the court ordered this sentence would run concurrent with the sentence imposed on Indictment Number 17-09-1281.

On June 6, 2019, defendant filed a pro se petition for PCR. He alleged that his counsel "affirmatively misadvised" him regarding the immigration

consequences of his guilty plea by telling him that his "plea [would] not affect [his] immigration proceedings." On April 21, 2020, defendant filed an amended petition, additionally alleging his counsel was ineffective for not conducting pretrial investigation. On August 10, 2020, defendant filed a certification in which he stated, "I only heard I could possibly be deported from my trial attorney . . . and never spoke with anyone personally about my immigration status before I entered my plea agreement."

On January 4, 2021, Judge Escandon issued an order and written decision denying PCR without an evidentiary hearing. He found defendant's "allegation of being misadvised [of the immigration consequences of his guilty plea] . . . contradictory of [his] prior statement that he was advised of the possibility of deportation." He further noted that defendant acknowledged on the record, at the time of his plea, that plea counsel had advised him of the immigration consequences of the plea and indicated at that same time that she had reviewed potential immigration consequences with defendant.

Judge Escandon also noted that "defendant answered affirmatively when asked by the plea judge whether he had ample opportunity to speak with [plea counsel] or an immigration attorney on the impact of the plea." The judge therefore concluded that "plea counsel acted well within the scope of

competence," and "adequately informed defendant of deportation"; in addition, "defendant's own certification reveals that he knew he could be subject to deportation."

As a result, Judge Escandon found that defendant's claims lacked the support of sufficient evidence to warrant an evidentiary hearing. He concluded that defendant's claims were "mere bald assertion[s]," that were "contradicted by the record and his own certification." When viewed in the light most favorable to the defendant, defendant failed to demonstrate "a 'reasonable likelihood of success' to warrant an evidentiary hearing."

On appeal, defendant presents the following arguments for our consideration:

AN EVIDENTIARY HEARING IS NECESSARY TO DETERMINE WHETHER DEFENDANT'S PLEA COUNSEL PROVIDED INACCURATE ADVICE ON HOW THE NEGOTIATED GUILTY PLEA WOULD IMPACT DEFENDANT'S IMMIGRATION STATUS.

- A. The performance of defendant's plea counsel was inadequate where she did not advise that a guilty plea to N.J.S.A. 2C:24-4a(1) required mandatory deportation and permanent removal.
- B. Because his plea counsel's performance was deficient, defendant was prejudiced where, if

he had negotiated a guilty plea to another crime, he would not have been subject to mandatory deportation and permanent removal.

"[W]e review under the abuse of discretion standard the PCR court's determination to proceed without an evidentiary hearing." State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013). "If the court perceives that holding an evidentiary hearing will not aid the court's analysis of whether the defendant is entitled to post-conviction relief, . . . then an evidentiary hearing need not be granted." Ibid. (alteration in original) (quoting State v. Marshall, 148 N.J. 89, 158 (1997)). We review the denial of a PCR petition with "deference to the trial court's factual findings . . . 'when supported by adequate, substantial and credible evidence.'" State v. Harris, 181 N.J. 391, 415 (2004) (alteration in original) (quoting Toll Bros. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

Where, as here, "no evidentiary hearing has been held, we 'may exercise de novo review over the factual inferences drawn from the documentary record by the [PCR judge].'" State v. Reevey, 417 N.J. Super. 134, 146-47 (App. Div. 2010) (alteration in original) (quoting Harris, 181 N.J. at 421). We also review de novo the legal conclusions of the PCR judge. Harris, 181 N.J. at 415-16 (citing Toll Bros., 173 N.J. at 549). A defendant seeking PCR must establish "by a preponderance of the credible evidence" that he is entitled to the requested

relief. State v. Nash, 212 N.J. 518, 541 (2013) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). The defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

Ineffective assistance of counsel claims must satisfy the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), which was also adopted our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). Under the first prong, a "defendant must show that counsel's performance was deficient" and that counsel's errors were so egregious that he "was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy of representation by counsel." Fritz, 105 N.J. at 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963)). The second prong requires a defendant to demonstrate that the alleged defects prejudiced his right to a fair trial to the extent "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694; Fritz, 105 N.J. at 60-61 (internal quotation marks omitted). The defendant "must do more than make

bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999).

Guided by these legal principles, we discern no abuse of discretion requiring reversal. As Judge Escandon set forth in detail, defendant's claims are bald assertions unsupported by any competent evidence. Many of his claims are directly contradicted by the transcripts of defendant's sworn testimony at the plea and sentencing hearings, at which he acknowledged his understanding of the plea agreement, and expressed satisfaction with counsel.

To the extent we have not addressed defendant's remaining arguments, we find they lack sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION