

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3844-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAMAR G. FIELDS, a/k/a
LOMONT FIELDS,

Defendant-Appellant.

Submitted January 26, 2022 – Decided April 28, 2022

Before Judges Gooden Brown and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 11-03-0404.

Joseph E. Krakora, Public Defender, attorney for appellant (Steven M. Gilson, Designated Counsel, on the brief).

Esther Suarez, Hudson County Prosecutor, attorney for respondent (Stephanie Davis Elson, Assistant Prosecutor, on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant appeals from the December 6, 2019 Law Division order denying his first petition for post-conviction relief (PCR) after conducting an evidentiary hearing. We affirm.

Defendant was charged in a thirty-two-count Hudson County indictment with sixteen counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(4) and 2C:14-2(a)(3) (counts one, six, seven, eight, nine, ten, eleven, twelve, fourteen, nineteen, twenty-six, twenty-seven, twenty-nine, thirty, thirty-one, and thirty-two); two counts of first-degree robbery, N.J.S.A. 2C:15-1(a)(1) (counts seventeen and twenty-two); two counts of second-degree burglary, N.J.S.A. 2C:18-2(a) (counts thirteen and twenty-three); third-degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a) (count twenty-eight); three counts of third-degree criminal restraint, N.J.S.A. 2C:13-2(a) (counts two, fifteen, and twenty); two counts of third-degree terroristic threats, N.J.S.A. 2C:12-3(b) (counts five and twenty-four); three counts of third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (counts three, sixteen, and twenty-one); two counts of fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (counts four and twenty-five); and fourth-degree child abuse, N.J.S.A. 9:6-1 and 9:6-3 (count eighteen).

The charges stemmed from allegations that in separate sexual offenses committed on two different dates, defendant sexually assaulted three female victims, two of whom were related and living together, after breaking into the victims' respective Jersey City homes. The crimes involving the related victims – a mother and her seventeen-year-old daughter – occurred on September 24, 2010. The crimes involving the third victim occurred on September 3, 2010. On defendant's motion, the trial court severed the charges and conducted two separate trials in 2013 – the first involving the September 24, 2010 offenses and the second involving the September 3, 2010 offenses.

Following the first trial, defendant was found guilty of sixteen of the nineteen counts pertaining to the September 24, 2010 offenses, including eight counts of first-degree aggravated sexual assault, and not guilty of the remaining three counts.¹ Following the second trial, defendant was found guilty of seven of the thirteen counts pertaining to the September 3, 2010 offenses, including four counts of first-degree aggravated sexual assault, and not guilty of the

¹ Defendant was acquitted of two counts of criminal restraint and one count of possession of a weapon for an unlawful purpose.

remaining six counts.² Ultimately, defendant was sentenced as a persistent offender, pursuant to N.J.S.A. 2C:44-3(a), to an aggregate extended term of life imprisonment, plus sixty years, with periods of parole ineligibility as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Judgments of conviction were entered in 2013 following the first trial and in 2014 following the second.

Defendant appealed his convictions and sentence. In an unpublished opinion, we affirmed the convictions and aggregate sentence but remanded for "entry of amended judgments of conviction," merging certain offenses for which defendant received concurrent sentences. State v. Fields, No. A-4815-13 (App. Div. May 11, 2017) (slip op. at 26). The facts underlying defendant's convictions are set forth in our unpublished opinion and need not be repeated at length here. See Fields, slip op. at 3-9. Suffice it to say that in addition to being identified as the assailant by one of the victims, the State presented expert testimony indicating that defendant's fingerprint matched a latent fingerprint recovered from both crime scenes. Id. at 5, 9. Defendant did not testify at either trial. However, at the first trial, the State presented defendant's statement to law

² Defendant was acquitted of four counts of aggravated sexual assault, one count of possession of a weapon for an unlawful purpose, and one count of unlawful possession of a weapon.

enforcement denying that he raped anyone and stating that "[t]hese girls are just tricks that are mad because I fucked them and I didn't pay them." Id. at 6 (alteration in original).

On May 10, 2018, defendant filed a pro se PCR petition asserting he received ineffective assistance of counsel (IAC) on several grounds. His assigned PCR counsel filed a supporting brief. On August 13, 2019, the PCR court determined defendant satisfied his burden of establishing a prima facie case of IAC by trial counsel's failure "to review discovery with him" but not as to defendant's other IAC claims. As a result, on September 19, 2019, the judge conducted an evidentiary hearing limited to the discovery claim, during which trial counsel testified for the State, and defendant testified on his own behalf.

At the hearing, defendant testified that in late 2010, his mother retained James Lisa to represent him about two weeks after his arrest. According to defendant, he first met Lisa in February 2011, while he was incarcerated at the Hudson Country Jail, and Lisa was at the jail "to see another client." During that initial visit, Lisa spent "less than ten minutes" with defendant. Thereafter, he only saw Lisa during court appearances, which occurred "[e]very other month." Defendant testified that Lisa never reviewed any discovery with him during their attorney-client relationship.

Defendant stated he first asked Lisa for his discovery in early 2013, prior to the first trial, and "constantly asked him about paperwork" thereafter but never received any. According to defendant, on the eve of each trial, when he reiterated his request for discovery, Lisa "just blew [him] off." Prior to the second trial, defendant continued to personally ask Lisa for discovery by "calling his office" and "send[ing] him letters." Defendant also "had family members go to [Lisa's] office" to "retrieve [his] discovery." However, Lisa did not respond to his calls or letters, and defendant's family members were told Lisa was "not in [the office]."

After defendant was convicted, Lisa filed an appeal on defendant's behalf but continued to ignore defendant's repeated requests for discovery. Defendant stated that after the second trial's sentencing, he never saw Lisa again, and Lisa never communicated with him or provided any discovery to him even though he "call[ed] . . . Lisa numerous times from . . . Trenton State Prison" and sent Lisa "a whole lot of letters."

Subsequently, defendant's mother filed an ethics complaint against Lisa on defendant's behalf. Defendant stated he eventually "obtained everything" from the "Ethics Committee" in 2016 after the Ethics Committee obtained his "discovery and . . . paperwork" from Lisa. Defendant explained that he wanted

to see the discovery "[s]o that . . . [he] kn[ew] what [he was] dealing with." When the PCR judge asked defendant whether he ever complained to the trial judge "at any of the numerous [c]ourt appearances [about not] getting discovery from . . . Lisa," defendant responded he "didn't know that [he] could do that."

Lisa testified that he was admitted to the New Jersey bar in 1984 and had personally handled about four to five hundred criminal cases since 2010. Contrary to defendant's testimony, Lisa testified that he reviewed discovery for both trials with defendant, whom he described as an "intelligent man." Lisa stated it was his common practice to "go over discovery with [clients] initially." If a client decided to reject a plea offer and go to trial, Lisa typically reviewed the discovery with the client again in preparation for trial. Ordinarily, Lisa provided copies of discovery to the client only if requested.

In defendant's case, Lisa specifically recalled meeting with defendant on "numerous occasions" and reviewing discovery with defendant prior to defendant's trials – once in the county jail and twice in the trial judge's jury room. According to Lisa, each meeting in the jury room lasted about an hour and a half. Lisa explained that "for the most part, [defendant's] discovery was the same" for both trials because "it was one case, initially, with three victims," until he successfully moved to sever, and "it basically evolved into two cases."

Lisa denied ever receiving a request for discovery from defendant or a family member during the trial court proceedings and stated he would have complied with any such request. Lisa testified that it was only after losing the appeal that defendant's family members requested defendant's discovery. Lisa added he provided copies of the discovery to them, along with copies of the trial transcripts acquired during the appellate proceedings.

Lisa acknowledged the ethics complaint filed against him by defendant's mother and confirmed at the evidentiary hearing that the complaint was still pending. Lisa indicated that prior to the ethics complaint, he was unaware that defendant and his family members were dissatisfied with his performance, particularly since they could have retained a different attorney to handle the second trial or the appeal but chose not to. Lisa testified that contrary to defendant's claim, defendant "knew what the discovery was" and "knew what the case was about" because they "had discussed it at length." Lisa had explained to defendant the significant issues they would "have to overcome in trial," and defendant had participated in formulating the defense of consent.

Following the hearing, the judge denied defendant's petition for PCR in a December 6, 2019 order. In an accompanying written opinion, the judge stated defendant failed to establish that Lisa's performance fell below the objective

standard of reasonableness set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984) and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987), or that the outcome would have been different without the purported deficient performance, as required under the second prong of the Strickland/Fritz test. In reaching his conclusion, the judge credited Lisa's testimony, which the judge described as "persuasive and credible," and rejected defendant's claims as "not credible." Specifically, the judge found that defendant's failure to "voice[] a problem with his trial counsel" to "the trial court over the course of two separate trials" undermined his credibility. Additionally, according to the judge, "[t]he fact that [defendant] took part in putting forth th[e consent] defense makes implausible his claim that he did not review discovery with his counsel."

Turning to the prejudice prong of the Strickland/Fritz test, the judge stated:

Had this [c]ourt found that trial counsel's performance fell outside the range of professionally competent assistance because of his alleged failure to provide and review discovery with [defendant] during his two complex trials, [defendant] still has not shown how the error would undermine the court's confidence in the outcome of [defendant's] cases even now after he has had complete access to the discovery. . . . [Defendant] did not testify about how his access to discovery would have changed the outcome of his case. He did not

testify about any trial strategies he would have preferred had he received the discovery materials; any plea offers he would have taken had he seen the discovery; or any defenses he would have raised had he seen the discovery. [Defendant] did not demonstrate through any evidence or testimony how the outcome of his case would have changed had he had access to the discovery.

In this ensuing appeal, in his counseled brief, defendant raises the following point for our consideration:

DEFENDANT'S CONVICTIONS MUST BE REVERSED DUE TO TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO REVIEW DISCOVERY WITH HIM.

In his pro se brief, defendant argues:

POINT I

THIS COURT SHOULD REMAND THIS MATTER BACK TO THE PCR COURT FOR A FRESH HEARING IN LIGHT OF THE DISTRICT VI ETHIC'S COMMITTEE RULING IN THE MATTER OF DISTRICT VI ETHIC COMMITTEE VS. JAMES R. LISA[,] ESQ. VI-2018-12E AND VI-2018-15E.

POINT II

[DEFENDANT] WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL DURING THE TRIAL, DIRECT APPEAL AND THE PCR HEARING IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, ARTICLE 1[,] PARAGRAPH 10

OF [THE] NEW JERSEY CONSTITUTION, AND
[STRICKLAND] AND [FRITZ].

Our review of a PCR claim after a court has held an evidentiary hearing "is necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013); see also State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014) ("If a court has conducted an evidentiary hearing on a petition for PCR, we necessarily defer to the trial court's factual findings."). "An appellate court's reading of a cold record is a pale substitute for a trial judge's assessment of the credibility of a witness he has observed firsthand." Nash, 212 N.J. at 540. Thus, where an evidentiary hearing has been held, we should not disturb "the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting Nash, 212 N.J. at 540). However, "we need not defer to a PCR court's interpretation of the law," which we review de novo. Nash, 212 N.J. at 540-41; see also State v. Harris, 181 N.J. 391, 419 (2004).

To prevail on an IAC claim, a defendant must meet the two-pronged Strickland/Fritz test. Under the first prong, a defendant "must show that counsel's performance was deficient." Strickland, 466 U.S. at 687. "This requires showing that counsel made errors so serious that counsel was not

functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and "that counsel's representation fell below an objective standard of reasonableness." Id. at 687-88.

Under the second prong, a defendant "must show that the deficient performance prejudiced the defense." Id. at 687. "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Ibid. Moreover, there must be a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

"Judicial scrutiny of counsel's performance must be highly deferential," and a defendant must establish both prongs of the Strickland/Fritz test to obtain a reversal of the challenged conviction. Strickland, 466 U.S. at 689, 697; Fritz, 105 N.J. at 58. Although a failure to satisfy either prong causes the denial of a PCR petition based on IAC, State v. Parker, 212 N.J. 269, 280 (2012), "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Strickland, 466 U.S. at 697.

Here, we agree with the judge that defendant failed to satisfy either prong of the Strickland/Fritz test to justify PCR. The sole issue before the judge was

one of credibility – whether Lisa reviewed discovery with defendant in preparation for trial. Lisa testified that he did, but defendant testified that he did not. The judge believed Lisa's testimony and rejected defendant's.³

On appeal, defendant essentially argues the judge erred in his credibility findings and asserts that "trial counsel's failure to review discovery with defendant constituted per se ineffectiveness" pursuant to United States v. Cronin, 466 U.S. 648, 659 (1984) (establishing a category of IAC claims for which the defendant is not required to show prejudice because the degree of deficient performance is tantamount to a "complete denial of counsel"). However, the judge's findings that trial counsel reviewed the discovery with defendant are supported by sufficient, credible evidence in the record and are therefore entitled to our deference.

In his pro se brief, defendant asserts the judge's credibility findings are "not supported by the District VI Ethic's Committee findings" that "trial counsel . . . violated four Rules of Professional Conduct." The Ethics Committee's ruling was pending during the evidentiary hearing and therefore not presented to the

³ The issue of whether Lisa had reviewed discovery with defendant was conflated with whether Lisa had provided copies of discovery to defendant during the trial proceedings. Defendant testified Lisa ignored his repeated requests for the discovery, but Lisa testified he never provided discovery because defendant never requested it.

PCR judge. However, even if the Ethics Committee's ruling had been available for the judge's assessment of the performance prong of the Strickland/Fritz test, it would have had no impact on the prejudice prong. Regardless of whether trial counsel reviewed discovery with defendant, as the judge astutely pointed out, defendant failed to demonstrate "how the outcome of his case would have changed had he had access to the discovery." Thus, defendant's failure to demonstrate prejudice is fatal to his petition, notwithstanding the Ethics Committee's ruling. See State v. Gaitan, 209 N.J. 339, 350 (2012) ("Although a demonstration of prejudice constitutes the second part of the Strickland analysis, courts are permitted leeway to choose to examine first whether a defendant has been prejudiced, and if not, to dismiss the claim without determining whether counsel's performance was constitutionally deficient." (citing Strickland, 466 U.S. at 697)).

For these reasons, we conclude the judge correctly denied defendant's PCR petition. We also decline to consider defendant's pro se claim that PCR counsel was ineffective. We are loathe to entertain an ineffective-assistance-of-PCR-counsel claim on appeal from the denial of a first PCR petition. See State v. Armour, 446 N.J. Super. 295, 317 (App. Div. 2016) (deferring the defendant's ineffective-assistance-of-PCR-counsel claim to a second PCR petition because

"there [were] extensive proofs outside the record"). Because defendant's claim that his PCR counsel was ineffective was never presented to the trial court and relies on evidence outside the PCR record, the claim is better suited for a second PCR petition. See R. 3:22-12(a)(2)(C).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION