

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0141-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MAURICE GOODEN,
a/k/a MARK THOMAS,

Defendant-Appellant.

Submitted November 16, 2022 - Decided December 1, 2022

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 13-06-1626.

Joseph E. Krakora, Public Defender, attorney for appellant (Anthony J. Vecchio, Designated Counsel, on the brief).

William Reynolds, Atlantic County Prosecutor, attorney for respondent (Kristen Pulkstenis, Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Maurice Gooden appeals from an order denying his post-conviction relief (PCR) petition without an evidentiary hearing. He contends the PCR court erred by determining he failed to present evidence establishing a prima facie ineffective assistance of counsel claim against trial counsel and by denying his petition without an evidentiary hearing. Unpersuaded by defendant's contentions, we affirm.

A jury convicted defendant of first-degree aggravated sexual assault, second-degree aggravated assault, and second-degree robbery. The court imposed a fifty-five-year sentence subject to the requirements of the No Early Release Act, N.J.S.A. 2C:43-7.2. We affirmed the conviction and sentence, State v. Gooden, No. A-5528-14 (App. Div. Sept. 26, 2017), and the Supreme Court denied defendant's petition for certification, State v. Gooden, 232 N.J. 372 (2018).

Defendant filed a PCR petition asserting an ineffective assistance of counsel claim. He averred trial counsel was ineffective by failing to: consult with him prior to trial; conduct an adequate pretrial investigation concerning the buccal swab testing of his saliva and the DNA testing of specimens taken from

the sexual assault and robbery victim; and object to the admission of, and move to suppress, allegedly inadmissible evidence.

In a written opinion, the PCR court rejected defendant's claims, finding his contention counsel did not adequately confer with him prior to trial constituted a bald assertion. The court also determined defendant failed to establish he was prejudiced by counsel's alleged error.

The PCR court further rejected defendant's claim trial counsel was ineffective by failing to conduct an adequate pretrial investigation. The court explained defendant did not present any competent evidence establishing what an investigation would have revealed. The court therefore concluded the claim constituted nothing more than a bald assertion.

The PCR court also rejected the claim counsel was ineffective by failing to object to, or move to suppress, inadmissible evidence. The PCR court noted counsel objected to various evidence at trial and otherwise moved to suppress evidence during the proceedings.¹ The court further noted defendant failed to identify with particularity the evidence he claimed counsel should have moved to suppress and otherwise challenge at trial. The court concluded defendant

¹ For example, the PCR court explained trial counsel moved for the suppression of DNA evidence, as well as "various photographs and photocopies."

failed to prove his counsel's performance was deficient or that he suffered any resulting prejudice, and therefore he did not establish a prima facie ineffective assistance of counsel claim. Accordingly, the court denied the PCR petition without an evidentiary hearing and entered a memorializing order. This appeal followed.

On appeal, defendant presents the following arguments:

POINT I

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DUE TO TRIAL COUNSEL'S FAILURE TO PROPERLY INVESTIGATE THE FACTS OF THE CASE OR DISCUSS TRIAL STRATEGY WITH DEFENDANT.

POINT II

THE PCR COURT ERRED IN NOT GRANTING DEFENDANT AN EVIDENTIARY HEARING.

We review the legal conclusions of a PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004) (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). The de novo standard also applies when reviewing mixed questions of fact and law. Id. Where an evidentiary hearing has not been held, it is within our authority "to conduct a de novo review of both the factual findings and legal conclusions of the PCR court." Id. (emphasis in original). We apply that standard here.

On appeal, defendant's counsel's brief reprises the claims made before the PCR court. Counsel contends the court erred by finding defendant's ineffective assistance of counsel claims constitute bald assertions because defendant articulated specific examples of counsel's purported errors including counsel's alleged failure to: "properly analyze the DNA evidence"; "investigate the circumstances surrounding the collection of crime scene evidence"; and "properly discuss trial strategy with him."

Defendant bore the burden of establishing a prima facie ineffective assistance of counsel claim under the two-prong standard established in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted for application under our State Constitution in State v. Fritz, 105 N.J. 42, 58 (1987). To establish a prima facie claim, a defendant must present competent evidence, State v. Jones, 219 N.J. 298, 312 (2014), establishing facts demonstrating counsel's handling of the matter "fell below an objective standard of reasonableness[.]" Strickland, 466 U.S. at 688. A defendant must also present evidence establishing a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694; see State v. Gideon, 244 N.J. 538, 551 (2021) (noting a "defendant must 'affirmatively prove prejudice'" under Strickland's second prong (quoting

Strickland, 466 U.S. at 693)); see also State v. Nash, 212 N.J. 518, 542 (2013) (explaining a defendant's failure to sustain his or her burden under the Strickland standard requires dismissal of the PCR petition).

"[B]ald assertions" are insufficient to sustain a defendant's burden of establishing a prima facie ineffective assistance of counsel claim under the Strickland standard. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity," Jones, 219 N.J. at 312, ""facts sufficient to demonstrate counsel's alleged substandard performance."" Ibid. (quoting State v. Porter, 216 N.J. 343, 355 (2013) (quoting Cummings, 321 N.J. Super. at 170)).

Contrary to defendant's contentions, he did not satisfy his burden under the Strickland standard. His claims trial counsel erred by failing to conduct an adequate investigation concerning DNA evidence and the collection of evidence at the crime scene are untethered to any facts supported by an affidavit or certification establishing what an "investigation would have revealed," Cummings, 321 N.J. Super. at 170, and demonstrating a reasonable probability that, but for his counsel's alleged failure to conduct an adequate investigation, there is a reasonable probability the result of his trial would have been different,

Strickland, 466 U.S. at 694. Similarly, his claim trial counsel's performance was deficient by failing to confer with him prior to trial is bereft of any support in competent evidence, see Cummings, 321 N.J. Super. at 170, and defendant's PCR petition is devoid of evidence establishing he suffered prejudice under the Strickland standard from counsel's purported error, see Gideon, 244 N.J. at 551. Stated differently, defendant failed to present any competent evidence establishing facts satisfying his burden under both prongs of the Strickland standard on each of his ineffective assistance of counsel claims.

We have also considered the arguments raised in defendant's pro se supplemental appellate brief, and we conclude they suffer from the same infirmities and more. The arguments in defendant's brief are founded on a myriad of purported facts, none of which is supported by citation to the record before the PCR court. See R. 2:6-2(a)(5) (requiring facts asserted in briefs on appeal be "supported by references to the appendix and transcript.").

Furthermore, our independent review of the record before the PCR court does not reveal support in any competent evidence for the putative facts upon which defendant appears to base his pro se arguments.² A court may not

² We observe defendant's pro se brief includes a statement that he "sware[s]" [sic] all the statements in his brief are true. That assertion does not convert his

properly consider purported facts that are not supported by competent evidence, see R. 1:6-6, or arguments based on facts asserted for the first time on appeal, see State v. Robinson, 200 N.J. 1, 20 (2009) (explaining reviewing courts generally will not consider "questions or issues not properly presented to the trial court . . . unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest" (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973))). In sum, defendant's pro se brief offers no basis to conclude the PCR court erred by finding he failed to satisfy his burden under the Strickland standard on each of his ineffective assistance of counsel claims.

A PCR court should grant an evidentiary hearing if a defendant establishes a prima facie ineffective assistance of counsel claim in support of PCR. State v. Preciose, 129 N.J. 451, 462 (1992). "To establish a prima facie claim of ineffective assistance of counsel, a defendant must demonstrate the reasonable likelihood of succeeding under the" Strickland standard. Id. at 463

brief into an affidavit or certification establishing the purported facts because none of his allegations of fact is based on his personal knowledge. See R. 1:6-6 ("If a motion is based on facts not appearing of record or not judicially noticeable, the court may hear it on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify . . .").

(emphasis in original). A defendant is not entitled to an evidentiary hearing where there is a failure to satisfy both prongs of the Strickland standard. Strickland, 466 U.S. at 700; see, e.g., State v. Gaitan, 209 N.J. 339, 350 (2012) (explaining a failure to make a prima facie showing of prejudice under Strickland's second prong requires dismissal of an ineffective assistance of counsel claim without an evidentiary hearing). Since defendant failed to sustain his burden on each of his claims here, the court did not err by denying his petition without an evidentiary hearing. Porter, 216 N.J. at 355; R. 3:22-10(b).

To the extent we have not expressly addressed any arguments made in support of defendant's appeal, we have determined they are without sufficient merit to warrant discussion in a written opinion. 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