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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0474-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CARLOS M. PIPER, a/k/a LOS,

Defendant-Appellant.

Submitted November 9, 2016 – Decided March 10, 2017

Before Judges Reisner and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment
No. 10-07-1249.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alan I. Smith, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Monica
do Outeiro, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant, Carlos Piper, appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. For the reasons that follow, we affirm.

Defendant pled guilty to attempted murder, N.J.S.A. 2C:11-3, N.J.S.A. 2C:5-1; possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b). The sentencing court imposed an aggregate sentence of eleven years, subject to an eighty-five percent period of parole ineligibility in accordance with the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The sentence was consistent with defendant's plea agreement. Defendant did not file a direct appeal from his conviction and sentence.

Defendant's conviction arose from his pointing a loaded gun at his victim's head. The victim avoided being shot by moving his head and pushing defendant's arm up as defendant was discharging the weapon.¹ The victim then ran away while defendant continued to shoot. Police apprehended defendant in a car with a gun that he admitted belonged to him.

Defendant filed a PCR petition on December 22, 2014, in which he argued that his trial attorney provided ineffective assistance of counsel by failing to "conduct an adequate investigation and

¹ The incident was captured on a surveillance video that defendant viewed prior to pleading guilty.

prepare a defense," "fail[ing] to present [an] alibi defense," "fail[ing] to file an appeal," failing to "adequately consult with [defendant] or prepare the case with his client," and "fail[ing] to develop mitigating circumstances for sentencing purposes." Defendant also asserted that he was seeking "to set aside his plea and move for a new trial as the plea was a product of coercion." Defendant did not file any supporting certifications or other evidence to support his contentions.

PCR counsel submitted a brief and amended petition that also argued trial counsel did not "properly investigate, communicate, prepare or explain his trial strategy and fail[ed] to file appropriate motions." In the brief, defendant averred that his attorney failed to seek the dismissal of the indictment because "this was not a case of attempted murder." In addition, he faulted counsel for not "challeng[ing] the statement made by defendant."

The PCR judge denied defendant's petition by order dated September 4, 2015, placing his reasons on the record that day. In his decision, the judge made findings from the record about the events leading to defendant's arrest, including the contents of the recording depicting the attempted murder, defendant's statement to police confirming his possession of a weapon, the police investigation, and presentation of the matter to the grand jury. The judge also reviewed what transpired during defendant's

plea and sentence before another judge. He then reviewed the applicable legal principles governing PCR petitions.

The judge concluded that the plea judge "conducted a complete plea colloquy," where the "judge found that . . . defendant knew and understood the nature of his charges, the nature of his plea and his rights, and he provided a sufficient [factual] basis for his plea." The court also observed that prior to sentencing defendant filed a motion to withdraw his plea, which he withdrew before being sentenced. Finally, the judge reviewed the imposition of defendant's sentence and observed that it was consistent with his plea agreement, noting defense counsel requested a shorter term at sentencing.

The PCR judge concluded that there was no basis to allow the withdrawal of the plea or to grant PCR because defendant's claim of "coercion" and allegations of ineffective assistance of counsel were belied by the record. The judge also observed that all of defendant's contentions were unsupported by any facts, finding them to be "bald unsupported assertions which do not support a basis for [PCR]."

Defendant presents the following issues for our consideration in his appeal.

POINT I

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED AND THE MATTER REMANDED FOR AN EVIDENTIARY HEARING BECAUSE THE ISSUES RAISED IN DEFENDANT'S PETITION PRESENTED THE COURT WITH [PRIMA FACIE] PROOF OF INEFFECTIVE ASSISTANCE OF COUNSEL BY A PREPONDERANCE OF THE EVIDENCE.

POINT II

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED BECAUSE IT VIOLATED DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

We are not persuaded by either of these arguments and affirm. The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-prong test of establishing both that: (1) counsel's performance was deficient and he or she made errors that were so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such

that there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, supra, 466 U.S. at 687, 694, 104 S. Ct. at 2064, 2068, 80 L. Ed. 2d at 693, 698.


The mere raising of a claim for PCR does not entitle a defendant to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). When determining whether to grant an evidentiary hearing, the PCR court must consider the facts in the light most favorable to the defendant to determine if a defendant has established a prima facie claim. State v. Preciose, 129 N.J. 452, 462-63 (1992). It follows that a "defendant must allege specific facts and evidence supporting his allegations," State v. Porter, 216 N.J. 343, 355 (2013), and "must do more than make bald assertions that he was denied the effective assistance of counsel." Cummings, supra, 321 N.J. Super. at 170. PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity the facts that he wished to present." State v. Jones, 219 N.J. 298, 312 (2014).

Applying these guiding principles, we conclude that defendant failed to make a prima facie showing of ineffectiveness of trial counsel within the Strickland-Fritz test because, as the PCR judge found, he failed to provide any factual support for any of his

contentions. Accordingly, the PCR judge also correctly concluded that an evidentiary hearing was not warranted. See Preciose, supra, 129 N.J. at 462-63.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION