

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1125-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

C.R.,

Defendant-Appellant.

Submitted September 25, 2017 — Decided December 11, 2017

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment Nos.
10-12-3475 and 11-10-2260.

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

Mary Eva Colalillo, Camden County
Prosecutor, attorney for respondent (Patrick
D. Isbill, Assistant Prosecutor, of counsel
and on the brief).

PER CURIAM

Defendant C.R.¹ appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. For the reasons that follow, we affirm.

In November 2010, defendant was indicted for third-degree failure to register as a sex offender, N.J.S.A. 2C:7-2(a), a provision in the Registration and Community Notification Law, N.J.S.A. 2C:7-1 to -11, also known as Megan's Law (Megan's Law). The indictment indicates his obligation to register arose out of a 2003 juvenile delinquency adjudication for endangering the welfare of a minor, N.J.S.A. 2C:24-4.² In February 2011, defendant pled guilty to failing to register as a sex offender and, one month later, was sentenced to two years of probation on the condition he spend 270 days in jail.

In January 2012, defendant was found guilty of violating probation. Because not pertinent to any issue on appeal, we need not detail the reasons defendant was found to have violated probation. However, as a result of this finding, the court revoked and terminated defendant's probation and sentenced him to a four-year flat term of imprisonment.

¹ To protect the victims' privacy, we refer to defendant by his initials.

² The indictment did not specify the provision in N.J.S.A. 2C:24-4 of which defendant was convicted; we note not all convictions for endangering the welfare of a child trigger the application of Megan's Law.

Meanwhile, in May 2011, defendant had been indicted for fourth-degree knowingly providing false information about his place of residence to the local police, N.J.S.A. 2C:7-2(e), and for fourth-degree failing to notify the local police of a change of address, N.J.S.A. 2C:7-2(d). Like the previous indictment, this one also stated the charges arose out of an adjudication defendant endangered the welfare of a child.

Just days after his probation was terminated, defendant pled guilty to failing to notify the local police of a change of address, as well as to eluding, N.J.S.A. 2C:29-2(b), a charge included in yet a third indictment. In March 2012, defendant was sentenced to a four-year flat term of imprisonment for eluding, and to a one-year flat term for failing to inform the police of a change of address; both sentences were ordered to run concurrently to the sentence imposed for violating probation.

Defendant did not file a direct appeal from his convictions or sentences. In July 2014, he filed a PCR petition as a self-represented litigant and was subsequently assigned counsel. The arguments made before the PCR court pertinent to this appeal were as follows.

First, defendant argued he had never been convicted of endangering the welfare of a child. Therefore, he contended,

plea counsel had been ineffective for failing to move to dismiss the two subject indictments on the ground they were defective. Second, he contended that even if he had been convicted of an offense requiring he register as a sex offender, the court never advised him of his obligation to register, as required by N.J.S.A. 2C:7-3. Third, defendant claimed plea counsel knew or should have known the factual basis for his plea to failing to register as a sex offender was deficient, making his plea neither knowing nor voluntary. Thus, defendant claims plea counsel should have taken action to vacate the plea.

Following argument on defendant's PCR petition, Judge Gwendolyn Blue set forth a painstakingly thorough review of the pertinent portions of defendant's record, followed by an analysis of why he was not entitled to post-conviction relief. Well supported by the record, we defer to Judge Blue's factual findings, see State v. Johnson, 42 N.J. 146, 162 (1964). We further concur with her legal conclusions. We briefly recount those findings.

In 2003, defendant, then a minor, was charged with fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b), and lewdness as a disorderly persons offense, N.J.S.A. 2C:14-4(a). The two victims of these offenses were minors. The State was agreeable to defendant's request he plead to an offense that did

not subject him to Megan's Law. Defendant ultimately pled guilty to endangering the welfare of a child, N.J.S.A. 2C:24-4, and lewdness as a disorderly persons offense. It is not clear to which provision in N.J.S.A. 2C:24-4 defendant pled, but it is undisputed such provision did not subject him to Megan's Law.

Thereafter, the Family Part judge who presided over the guilty plea proceeding became aware defendant had a juvenile record in another county that reflected he had been engaging in sexually impulsive behavior. The judge shared the record with the State and defendant's counsel. Based upon the discovery of this new information, the State filed and the judge granted its motion to vacate defendant's plea. Defendant challenged but this court affirmed the Family Part judge's decision to vacate the plea. See IMO of C.R., No. A-4679-03 (App. Div. September 30, 2005).

Following a bench trial, the Family Part judge adjudicated defendant a delinquent on the original charges, fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3(b), which is a Megan's Law offense, and lewdness as a disorderly persons offense, N.J.S.A. 2C:14-4(a). The tape of the disposition hearing no longer exists and, thus, there is no record of what occurred during this proceeding. However, the terms of defendant's disposition are not relevant; what is pertinent is whether

defendant was advised that, as a sex offender, he was subject to the registration requirements in Megan's Law. See N.J.S.A. 2C:7-3(1)(a).

Defendant contends he was not so advised but, as noted by the PCR court, does not dispute he signed a statement on June 10, 2005 acknowledging he had been adjudicated a delinquent for criminal sexual contact and informed of his obligation to register under Megan's Law. Among other things, in this statement defendant specifically acknowledged that if he moved to a new municipality, he had to register with the local police.

The PCR court rejected defendant's arguments plea counsel was ineffective. The two indictments under which defendant pled guilty for violating certain sex offender registration requirements did erroneously state his obligation to register arose out of a juvenile delinquency adjudication for endangering the welfare of a child, N.J.S.A. 2C:24-4. In addition, although defendant did plead to a provision in this statute as a juvenile, such provision did not subject him to Megan's Law. Moreover, this plea was later vacated. However, defendant was adjudicated a delinquent for criminal sexual contact pursuant to N.J.S.A. 2C:14-3(b), an offense that required him to register as a sex offender, see N.J.S.A. 2C:7-2(b)(2).

The indictments simply misstated the offense under which he was required to register as a sex offender. Had plea counsel made a motion to dismiss the indictments on the ground the predicate offense in both were erroneous, the court either would have permitted the State to amend the indictments or the indictments would have been dismissed, followed by the State filing new indictments setting forth the correct predicate offense.

The court readily rejected defendant's claim he did not know he had to register as a sex offender, an assertion proven to be patently false by the document defendant signed on June 10, 2005. Finally, the court determined defendant's factual basis for his plea to failing to register as a sex offender was sufficient.

On appeal, defendant contends:

POINT I — THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT AN EVIDENTIARY HEARING ON HIS PETITION FOR POST CONVICTION RELIEF WHERE DEFENDANT WAS DEPRIVED OF EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE OF TRIAL COUNSEL'S FAILURE TO INVESTIGATE DEFENDANT'S PREDICATE OFFENSE AND FAILURE TO PROVIDE ADEQUATE REPRESENTATION DURING DEFENDANT'S PLEA HEARING.

A. Trial Counsel Was Ineffective For Not Properly Investigating Defendant's Predicate Offense And Not Moving To Dismiss The Indictments Against Defendant.

B. Trial Counsel Was Ineffective For
Not Adequately Representing Defendant
During His Plea Hearing.

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). To prevail on a claim of ineffective assistance of counsel, defendant must meet a two-prong test. The first prong requires defendant to prove counsel's performance was deficient and he or she made errors so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution. Strickland, supra, 466 U.S. at 687, 694, 104 S. Ct. at 2064, 2068, 80 L. Ed. 2d at 693, 698.

The second prong requires defendant to prove the defect in performance prejudiced defendant's rights to a fair trial and there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Ibid. If a defendant has pled guilty, the second prong requires defendant to show "'there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty but would have insisted on going to

trial.'" State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009)
(quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).

Here, we are satisfied from our review of the record that defendant failed to make a prima facie showing of ineffectiveness of plea counsel pursuant to the Strickland-Fritz test, and affirm substantially for the reasons expressed by Judge Blue in her oral decision. There is ample evidence defendant knew he was subject to Megan's Law. The fact the two indictments charging him with offenses pertaining to his failure to comply with Megan's Law misstated the predicate offense did not prejudice him. In addition, plea counsel was not ineffective for failing to take action to correct what was a mere technicality in those indictments. Defendant's argument his plea to failing to register as a sex offender lacked a factual basis is 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