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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-3436-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FLORIBERT B. NAVA,

Defendant-Appellant.

Submitted May 17, 2017 – Decided July 20, 2017

Before Judges Fuentes and Farrington.

On appeal from the Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 13-07-0690.

Joseph E. Krakora, Public Defender, attorney for appellant (Monique Moyse, Designated Counsel, on the brief).

Robert L. Taylor, Cape May County Prosecutor, attorney for respondent (Gretchen A. Pickering, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from the order of the Criminal Part denying her post-conviction relief (PCR) petition. We affirm.

On February 27, 2014, defendant Floribert Nava pleaded guilty pursuant to a negotiated agreement to first degree carjacking, N.J.S.A. 2C:15-2. At the plea hearing, defendant admitted she entered a young woman's car, brandished what turned out to be a toy handgun, and forced the victim to drive her to Philadelphia. Defendant also admitted that she threatened the victim by telling her that she would harm the victim's family. Although not a part of the plea hearing, it is not disputed that defendant forced the victim to drive for nearly ninety minutes. Defendant's goal was to retrieve the victim's child. This harrowing ordeal came to an abrupt end when the victim intentionally drove the car into a marked police vehicle. Defendant was apprehended near the Benjamin Franklin Bridge.

As a part of the plea agreement, the State agreed to recommend that the court sentence defendant to a term of twelve years with an eighty-five percent period of parole ineligibility and five years of parole supervision as required under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. On March 27, 2014, the court sentenced defendant consistent with the terms of the plea agreement.

Defendant appealed the sentence under the summary process authorized by Rule 2:9-11. In an order dated October 1, 2014, this court remanded the matter and directed the sentencing judge

to provide more detailed reasons for the imposition of the sentence and to make specific findings in support of the applicable aggravating and mitigating factors in N.J.S.A. 2C:44-1. State v. Floribert Nava, No. A-4552-13 (App. Div. Oct. 1, 2014). On December 5, 2014, the trial court followed our instructions and again sentenced defendant to a term of twelve years subject to NERA.

On April 27, 2015, defendant filed a pro se PCR petition alleging ineffective assistance of counsel. Defendant claimed

her assigned counsel coerced her into entering a guilty plea by misrepresenting her potential sentencing exposure if she proceeded to trial in the case (telling her "100 years"); and failed to explain to her the strengths and weaknesses of the prosecution's case, as well as failing to make an informed decision because defense counsel never attempted to interview the purported victim in the case[.]

The trial court assigned counsel to represent defendant in prosecuting the PCR petition. PCR counsel filed a brief in support of defendant's petition. The matter came for oral argument before Judge Donna M. Taylor on February 9, 2016. After considering the arguments of counsel, Judge Taylor issued a memorandum of opinion denying defendant's petition on February 26, 2016. As a threshold issue, Judge Taylor concluded that an evidentiary hearing was not necessary because the material facts pertaining to defendant's allegations in support of PCR were not disputed.

After reviewing the record of defendant's plea hearing, Judge Taylor found defendant was fully apprised of her rights and knowingly waived those rights. Defendant also acknowledged that her attorney had answered all of her questions to her satisfaction, she had sufficient time to discuss her case with the attorney, and she was satisfied with the advice the attorney had provided her. With respect to her penal exposure, Judge Taylor found both defense counsel and the trial judge addressed defendant directly and explained to her in detail the potential sentence she could receive if she was convicted of the five charges reflected in the indictment.¹ Under these circumstances, Judge Taylor found that defense counsel's alleged warning to defendant that she was facing 100 years of imprisonment was a legally sound assessment of defendant's potential penal exposure.

Judge Taylor also rejected defendant's claim that defense counsel failed to review with her the strengths and weaknesses of the State's case. The record of the plea hearing shows that defendant acknowledged she had given a voluntary statement to law enforcement investigators admitting her culpability. Defendant

¹ In addition to the first degree carjacking charge that she pleaded guilty to, defendant was indicted for first degree kidnapping, N.J.S.A. 2C:13-1b(2); second degree luring or enticing a child, N.J.S.A. 2C:13-6; third degree terroristic threats, N.J.S.A. 2C:12-3a; and fourth degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4c.

was found inside the car owned by the victim "with a bag containing duct tape and a mask." The police found a weapon inside the car. Thus, Judge Taylor characterized the evidence against defendant as "substantial." Under these circumstances, Judge Taylor rejected as not credible defendant's claim that she did not make a knowing and fully informed decision to plead guilty.

At the PCR oral argument, defendant was provided with a certified court interpreter. At one point, defendant told Judge Taylor that she was having difficulty understanding "the legal things that are being said." That prompted the following colloquy:

THE COURT: Okay. I understand that. I just want to make sure that the words that we're saying, the interpreter is interpreting them so that you can at least hear the words.

DEFENDANT: Okay.

THE COURT: Okay. Have you had any problems? I know you don't understand the legal terminology, but you've been able to understand the words that are being interpreted from English to Spanish?

DEFENDANT: The last time I couldn't.

THE COURT: No. I'm talking about now.

DEFENDANT: Yeah.

. . . .

PCR COUNSEL: I would just add, Your Honor, that although she didn't assert that she would have definitely went to trial in the brief, it's her position that she couldn't make that

decision due to not understanding her interpreter at that time throughout the whole criminal process. She didn't understand her discovery review with her attorney. And it seems like that. So without understanding that voice, she doesn't know whether or not she would have went to trial.

THE COURT: Okay. And is that argument based on when the defense counsel met her at the jail to review the investigation and her plea forms?

PCR COUNSEL: Yes, Your Honor.

THE COURT: Okay. And it's just limited to that time frame.

PCR COUNSEL: Well, any and all times counsel met with her with the translator.

THE COURT: The translator that her attorney used?

PCR COUNSEL: Yes.

In addressing this argument, Judge Taylor acknowledged and reaffirmed what this court has long made clear: "It is a self-evident proposition that a defendant who is unable to speak and understand English has a right to have his trial proceedings translated so as to permit him to participate effectively in his own defense." State v. Guzman, 313 N.J. Super. 363, 377 (App. Div.) (quoting State v. Kounelis, 258 N.J. Super. 420, 427 (App. Div.), certif. denied, 133 N.J. 429 (1992)), certif. denied, 156 N.J. 424 (1998). Citing State v. Perez, Judge Taylor also recognized that "the language barrier between a defendant and

trial counsel raises the question of whether defendant received adequate assistance of counsel." State v. Perez, 100 N.J. Super. 427, 430 (App. Div.), certif. denied, 52 N.J. 160 (1968).

Judge Taylor ultimately rejected defendant's argument because the record shows defense counsel brought a Spanish language interpreter when he met with defendant. Other than her bald assertion in the PCR hearing, defendant neither presented evidence explaining how her "dialect² was different [from the translator's], nor provide[d] information on the level of distinction." More importantly, Judge Taylor found defendant had not claimed she would have rejected the State's plea offer and stood for trial if she had fully understood her attorney.

To prove ineffective assistance of trial counsel, a defendant must satisfy Strickland's two-part test by demonstrating: (1) "counsel's performance was deficient[,]" i.e., "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment[;]" and (2) "there

² A dialect is defined as "a regional variety of language distinguished by features of vocabulary, grammar, and pronunciation from other regional varieties and constituting together with them a single language." Dialect, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/dialect> (last visited July 7, 2017). At the plea hearing, defendant stated she was born in Acapulco, a city in the State of Guerrero, Mexico. No linguistic evidence has been presented to characterize the Spanish spoken in Mexico as a dialect.

is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687, 694, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674, 693, 698 (1984); accord State v. Fritz, 105 N.J. 42, 58 (1987). Applying this standard to the evidence defendant presented, Judge Taylor concluded defendant had failed to establish that defense counsel's representation fell below the standards of professional competence expected from an attorney in this State. Even if she had satisfied the first prong of Strickland/Fritz, defendant did not prove she would have rejected the State's plea offer and risked exposing herself to a likely far longer term of incarceration by going to trial.

Against this record, defendant now appeals raising the following argument:

POINT I

MS. NAVA IS ENTITLED TO AN EVIDENTIARY HEARING
ON HER CLAIM THAT HER ATTORNEY RENDERED
INEFFECTIVE ASSISTANCE OF COUNSEL.

We reject this argument and affirm substantially for the reasons expressed by Judge Taylor in her memorandum of opinion dated February 26, 2016.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION