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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3605-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHRISTOPHER M. JACKSON,

Defendant-Appellant.

Submitted May 25, 2017 – Decided July 6, 2017

Before Judges Hoffman and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
08-04-0523.

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

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Susan Berkow, Special
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Christopher Jackson appeals from a May 23, 2014 Law
Division order denying his petition for post-conviction relief
(PCR) without an evidentiary hearing. He also appeals from a

February 5, 2016 order denying reconsideration. Having reviewed defendant's arguments and the applicable law, we affirm.

On April 3, 2008, a Middlesex County grand jury returned Indictment No. 08-04-0523, charging defendant with first-degree murder, N.J.S.A. 2C:11-3(a)(1) (count one); third-degree criminal restraint, N.J.S.A. 2C:13-2(a)¹ (count two); and third-degree hindering apprehension, N.J.S.A. 2C:29-3(b) (count three). On September 12, 2008, pursuant to a negotiated plea agreement, defendant pled guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), an amended charge of count one. In return, the State agreed to dismiss the remaining counts and recommend a sentence of up to twenty-five years of imprisonment, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

At his plea hearing, defendant admitted that in the early hours of November 23, 2007, he had an altercation with the victim at the victim's apartment in Perth Amboy after drinking alcohol and using cocaine for several hours. Defendant had been staying with the victim at the apartment. Defendant acknowledged the victim made physical advances towards him, but defendant was able to "keep him away" after a brief physical confrontation.

¹ Both the indictment and defendant's judgment of conviction list the criminal restraint charge as a fourth-degree offense. However, the statutory citation, N.J.S.A. 2C:13-2, is a crime of the third degree.

When they physically separated, defendant acknowledged the victim "taunt[ed]" him by claiming he told other people and would tell his family they were in a homosexual relationship. Defendant then became angry and beat the victim, repeatedly delivering strong blows to his head and face. Defendant eventually rendered the victim incapable of fighting back, at which point defendant decided to take his belongings and leave the apartment. Prior to leaving, defendant bound the victim's hands and feet with an electrical cord to immobilize him and inserted a cloth into the victim's mouth. Defendant admitted that before he left, he heard the victim gasping for air and struggling. Defendant left the apartment after the victim ceased making noises and was no longer moving or breathing. He did not call for medical aid.

Defendant then affirmed his plea was voluntary, and he had adequate time to consult with his attorney before making his decision. He further acknowledged he understood the consequences of his plea.

Defendant obtained new counsel following his guilty plea, and on May 28, 2009, filed a motion to withdraw his plea. On July 9, 2009, after a hearing, the judge denied this motion.

The judge sentenced defendant on October 14, 2009. Defendant requested the judge find mitigating factors N.J.S.A. 2C:44-1(b)(2) (defendant did not contemplate his conduct would cause serious

harm), (3) (defendant acted under a strong provocation), (4) (substantial grounds tending to excuse defendant's conduct), and (8) (defendant's conduct was the result of circumstances unlikely to recur). The judge found the record supported aggravating factors N.J.S.A. 2C:44-1(a)(1) (nature and circumstances of the offense), (3) (risk of reoffending), (6) (defendant's prior criminal record), and (9) need for deterrence. He found mitigating factors N.J.S.A. 2C:44-1(b)(3) and (8). After concluding the aggravating factors outweighed the mitigating ones, the judge sentenced defendant to twenty-three years of imprisonment, subject to NERA.

Defendant appealed, and the matter was scheduled on the Excessive Sentence Oral Argument (ESOA) calendar. See R. 2:9-11. Defendant only challenged his sentence on appeal and did not dispute his underlying conviction. On March 9, 2011, following oral argument, we affirmed defendant's sentence.

Two years later, on May 3, 2013, defendant filed a petition for PCR, arguing his plea and sentencing counsel both rendered ineffective assistance. On May 23, 2014, following oral argument, the PCR judge denied defendant's petition without an evidentiary hearing. Defendant moved for reconsideration, which the PCR judge denied on February 5, 2016.

Defendant then filed this appeal and advances the following arguments:

POINT I

THE PCR COURT'S ORDER THAT DENIED DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF MUST BE REVERSED BECAUSE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PROCEEDINGS BELOW

- A. Trial counsel failed To Investigate And Present Viable Defense.
 - 1. Mens Rea Defenses.
 - a) Extreme Intoxication.
 - b) Diminished capacity.
 - c) Insanity defense.
 - 2. Self Defense.
- B. Defense Counsel Failed to Perform Proper Investigation.
- C. Defendant Did Not Enter Into A Voluntary Plea Because Counsel Coerced Him Into Entering Into Said Plea.
- D. Sentencing Counsel Failed to Argue for Mitigating Factors Amply Supported by the [R]ecord.

POINT II

THE PCR COURT ABUSED ITS DISCRETION WHEN IT DENIED DEFENDANT'S REQUEST FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

The United States Supreme Court established the test for determining whether counsel was ineffective in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), which our Supreme Court adopted in State v. Fritz, 105 N.J. 42 (1987). In order to meet this two-prong test, the defendant must establish 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.

Similarly, when a defendant claims ineffective assistance in connection with a guilty plea, he or she must show "(i) counsel's assistance was not 'within the range of competence demanded of attorneys in criminal cases'; and (ii) 'that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial.'" State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).

When a defendant raises a claim for ineffective assistance of counsel in support of PCR, the judge should grant an evidentiary hearing "if [the] defendant has presented a prima facie claim in support of post-conviction relief." State v. Preciose, 129 N.J. 451, 462 (1992). To establish a prima facie claim, the defendant "must demonstrate the reasonable likelihood of succeeding under" the Strickland test. Id. at 463. The judge "should view the facts in the light most favorable to the defendant." State v. Jones, 219 N.J. 298, 311 (2014). However, the "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." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). We review the decision of the PCR judge to forgo an evidentiary hearing de novo. State v. Harris, 181 N.J. 391, 421 (2004), cert. denied, 545 U.S. 1145, 125 S. Ct. 2973, 162 L. Ed. 2d 898 (2005).

Applying these standards, we first reject defendant's arguments his plea counsel was ineffective for failing to investigate and present the "mens rea" defenses of intoxication, diminished capacity, and insanity. Defendant asserts counsel should have used these defenses to rebut the "purposely" or "knowingly" mental-state requirements of first-degree murder,

criminal restraint, and hindering apprehension. See N.J.S.A. 2C:11-3(a)(1) and (2); N.J.S.A. 2C:13-2(a); N.J.S.A. 2C:29-3(b).

Regarding intoxication, defendant cites his plea admissions and a toxicology report showing cocaine and alcohol in his system to argue counsel should have pursued this defense. Voluntary intoxication that negates purpose or knowledge can provide a defense to crimes that require proof of these mental states, including first-degree murder. See State v. Warren, 104 N.J. 571, 576 (1986); N.J.S.A. 2C:2-8(a). However, voluntary intoxication is not a defense to aggravated manslaughter, which requires the State prove "[t]he actor recklessly causes death under circumstances manifesting extreme indifference to human life." N.J.S.A. 2C:11-4(a)(1); State v. Junita, 224 N.J. Super. 711, 722 (App. Div.), certif. denied, 113 N.J. 339 (1988); N.J.S.A. 2C:2-8(b). Based on the record before us, there is no question defendant's actions met the requirements for an aggravated manslaughter conviction. Therefore, because defendant pled guilty to aggravated manslaughter, he has failed to satisfy the second prong of Strickland by showing "the result of the proceeding would have been different." Strickland, supra, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.

Defendant next argues counsel was ineffective for failing to consult an expert to explore the viability of the defenses of

diminished capacity and insanity. Defendant points to several facts in support of these arguments, including his drug and alcohol use, his fear of his father's alleged homophobic beliefs, and his presentence report, which states he was "reportedly diagnosed with Paranoid Schizophrenia and Post Traumatic Stress Disorder." However, defendant has failed to identify any evidence suggesting he was suffering from such impairments during the incident in question. Instead, defendant's presentence report shows he knowingly confessed his actions to police and gave a videotaped statement admitting he did so because the victim "tried to play me out in a sexual manner." Defendant later affirmed these events under oath at his plea hearing. We therefore find defendant's claims amount to "bald assertions" of ineffective assistance that do not entitle him to an evidentiary hearing. Cummings, supra, 321 N.J. Super. at 170.

Defendant also argues plea counsel was ineffective for failing to pursue a claim for self-defense. This argument lacks merit. In order to justify the use of deadly force, the actor must "reasonably believe[] that such force is necessary to protect himself against death or serious bodily harm." N.J.S.A. 2C:3-4(b)(2). "[A] defendant claiming self-defense must have an actual belief in the necessity of using force, and must also establish

that the belief was honest and reasonable." State v. Urbina, 221 N.J. 509, 525 (2015).

Defendant contends the victim's advances established a reasonable belief that force was necessary to protect himself from sexual assault. The record shows defendant first used force to "keep [the victim] away"; he then used deadly force not to protect himself, but in response to the victim's taunting after they had physically separated. Because there was no basis to support a reasonable belief that deadly force was necessary, defendant's counsel was not deficient for failing to raise this claim. Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693.

Defendant further asserts these alleged errors show plea counsel "failed to properly investigate the facts and the law." For the reasons discussed, we reject defendant's arguments as mere "bald assertions that he was denied the effective assistance of counsel." Cummings, supra, 321 N.J. Super. at 170.

Defendant next argues his plea was involuntary because plea counsel "pressured him into pleading guilty." Specifically, defendant alleges counsel told him he would receive a higher sentence if he did not accept the State's plea offer. We reject defendant's claim, as he affirmed under oath that his plea was voluntary and he understood its consequences. We further find

plea counsel's assessment was correct; as the PCR judge noted, the evidence supporting a conviction for first-degree murder was "overwhelming." The minimum sentence for first-degree murder is thirty years of imprisonment. N.J.S.A. 2C:11-3(b)(1). Therefore, counsel's alleged statements were entirely appropriate and did not meet the standard for ineffective assistance.

Last, defendant contends his sentencing counsel was ineffective for failing to argue mitigating factors N.J.S.A. 2C:44-1(b)(11) (imprisonment would cause excessive hardship to dependents), and (12) (willingness of defendant to cooperate with law enforcement). Defendant argues these factors were applicable because he has three minor children, and he cooperated with law enforcement by confessing to police that he "did it."

However, sentencing judges are only obligated to find mitigating factors that "clearly were supported by the record," which was not the case here. See State v. Bieniek, 200 N.J. 601, 608 (2010). According to defendant's presentence report, he does not live with his children and admitted he failed to make child support payments.² These facts do not clearly indicate excessive hardship to dependents. See State v. Dalziel, 182 N.J. 494, 505 (2005). Moreover, we have questioned whether confessions

² As defendant notes, his presentence report does not explicitly indicate arrearage in his child support payments.

constitute "cooperation" under mitigating factor N.J.S.A. 2C:44-1(b)(12). See State v. Read, 397 N.J. Super. 598, 613 (App. Div.), certif. denied, 196 N.J. 85 (2008). Counsel was not deficient for failing to raise these factors.

Moreover, defendant cannot show prejudice. Aggravated manslaughter carries a maximum sentence of thirty years' imprisonment. N.J.S.A. 2C:11-4(c). Given the nature of defendant's offense, we find the imposed twenty-three year sentence was entirely appropriate, and defendant has failed to show how the outcome would have been different had his counsel raised these mitigating factors. Strickland, supra, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION