SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4549-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SCOTT BENNETT,

Defendant-Appellant.

Argued December 4, 2017 – Decided December 19, 2017

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 08-06-1477.

Andrew P. Slowinski, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Andrew P. Slowinski, on the briefs).

Mary R. Juliano, Assistant Prosecutor, argued the cause for respondent (Christopher J. Gramiccioni, Monmouth County Prosecutor, attorney; Mary R. Juliano, of counsel and on the brief; Randolph Mershon, III, Legal Assistant, on the brief).

PER CURIAM

After a 2010 jury trial, defendant Scott Bennett was convicted of: first-degree aggravated manslaughter of one victim by an act of vehicular homicide; second-degree aggravated assault of another victim by recklessly causing serious bodily injury to her under circumstances manifesting extreme indifference to the value of human life; second-degree leaving the scene of a motor vehicle accident; and various other offenses. The trial court sentenced defendant to an aggregate custodial sentence of forty-four years, subject to a twenty-eight-year parole disqualifier under the No Early Release Act, N.J.S.A. 2C:43-7.2. Defendant unsuccessfully challenged his convictions and sentence on multiple grounds on direct appeal. State v. Bennett, No. A-5727-09 (App. Div. Dec. 5, 2011), and the Supreme Court thereafter denied certification. 214 N.J. 115 (2013).

Defendant now appeals the trial court's denial of his petition for post-conviction relief ("PCR") without an evidentiary hearing. His main contention is that his trial counsel was ineffective in failing to assure that defendant personally watched the entire police video of the fatal accident the State provided in discovery. Defendant contends that if he had seen the graphic full video before trial, he would have accepted the State's plea offer, which had recommended a twenty-year aggregate custodial term. We affirm.

We incorporate by reference the factual narrative detailed in this court's unpublished December 2011 opinion. Bennett, slip op. at 7 to 14. In essence, the State's proofs showed that, on October 7, 2007, defendant, while intoxicated and with a suspended license, was spotted by a police officer speeding and weaving on local roads in Manalapan. The officer started to pursue him, and the chase was filmed on the squad car's Mobile Video Recording ("MVR") system. Defendant drove through a stop sign and collided with a motorcycle at an intersection, causing the motorcyclist and his passenger to be thrown to the pavement. Fleeing the scene, defendant drove over the motorcycle operator. Some of the operator's human remains were left on defendant's car. Defendant was apprehended later that evening at his home. The police found a blanket on his car window, which had been placed there in an apparent attempt to cover up the victim's remains.

During the course of discovery, the State provided to defendant's trial counsel a copy of the MVR. The MVR shows the officer's pursuit of defendant's car, defendant driving through the stop sign at the intersection and colliding with the motorcycle, and the operator and the motorcycle passenger being thrown onto the pavement. The MVR further depicts defendant's car turn around and flee the scene, running over the motorcyclist's

head and torso.[1] The MVR, or at least a portion of it, was initially played in the courtroom, with defendant and his counsel present, at a bail revocation hearing before trial. The MVR was played on a second occasion in the courtroom before trial, also in the presence of defendant and his counsel, at a suppression hearing.[2]

At the plea cut-off hearing, defendant acknowledged on the record that he had seen the police reports and "all" other discovery supplied by the State. His attorney stated he had "extensively" reviewed the discovery. In addition, defendant specifically acknowledged to the court that he had been given a chance to review with his attorney "all the discovery," including "videotapes," that he was satisfied that he had seen "everything," that he had spoken to his attorney about "everything," and that he was "satisfied" with his counsel's advice. Defendant insisted on going to trial, despite being told on the record by the judge that if he was convicted of all charges, he faced a sentence of up to life in prison. Defendant indicated that he was "absolutely" satisfied with his trial counsel. Counsel advised the court that

[1] On the audio portion of the MVR, the officer exclaims, "Oh my God," or words to that effect.

[2] As part of our review of the overall appellate record, we have watched the MVR, as urged by counsel.

defendant was adamant about rejecting the State's twenty-year plea offer and going to trial.

In his certification in support of his present PCR petition, defendant contends that his trial counsel was ineffective because he did not make sure that defendant personally observed the entire MVR before rejecting the State's plea offer. Defendant contends that the portion of the MVR depicting the accident itself was not played at the bail revocation hearing. Further, he contends that, at the subsequent suppression hearing where the entire MVR was played, he was seated in the rear of the courtroom because his attorney needed room at counsel table to spread out papers, and was therefore unable to see the images presented on the screen facing a witness. Defendant submitted a separate certification from his mother in support of his contentions that he had not seen the full MVR until it was played for the jury. He insists that, had he seen the full MVR, he would have realized the true strength of the State's case and would have accepted the plea offer.

The record further contains a handwritten letter that defendant wrote to his trial attorney after his conviction, urging the attorney to represent him on the direct appeal. Among other things, defendant recognized in his letter that, although he had not seen the entire MVR before it was played at trial, he had been "hell bent" on rejecting the plea offer, that therefore "it doesn't

matter" that he had not seen the full MVR in advance. He added that "[y]ou'll never hear me say you didn't do your best!" Defendant added that he was "certain that we can beat the eluding [charge] with another trial."

The PCR judge, Hon. John R. Tassini, carefully considered defendant's claims of ineffectiveness in light of the record and the applicable case law. Having done so, the judge rejected defendant's PCR petition, without an evidentiary hearing, in a comprehensive, fourteen-page written statement of reasons. Judge Tassini concluded that defendant failed to present a prima facie case of ineffective assistance of counsel under each of the two prongs of Strickland v. Washington, 466 U.S. 668, 694 (1984) (requiring proof of counsel's deficient performance and resulting prejudice to defendant); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland test in our State).

On his present appeal, defendant raises the following points for our consideration:

> POINT ONE
>
> THE PCR COURT SHOULD BE REVERSED AS DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING PLEA NEGOTIATIONS IN VIOLATION OF HIS RIGHTS UNDER THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE 10, PARAGRAPH 11 OF THE NEW JERSEY CONSTITUTION.

POINT TWO

THE PCR COURT ERRED BY DENYING DEFENDANT'S REQUEST FOR AN EVIDENTIARY HEARING ON HIS PETITION FOR POST-CONVICTION RELIEF.

POINT THREE

DEFENDANT'S PCR COUNSEL PROVIDED INEFFECTIVE ASSISTANCE IN PROCEEDINGS BEFORE THE LAW DIVISION (NOT RAISED BELOW).

POINT FOUR

DEFENDANT'S PCR PETITION SHOULD BE GRANTED FOR THE REASONS SET FORTH IN DEFENDANT'S PRO SE BRIEF IN SUPPORT OF HIS PETITION.

REPLY POINT ONE

THIS MATTER SHOULD BE REMANDED TO THE LAW DIVISION FOR AN EVIDENTIARY HEARING ON DEFENDANT'S PETITION FOR PCR.

REPLY POINT TWO

DEFENDANT DID NOT RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL IN PROCEEDINGS BEFORE THE PCR COURT.

Having considered these arguments, we affirm the rejection of defendant's PCR petition, substantially for the thoughtful reasons set forth by Judge Tassini in his written opinion. We agree with the judge that defendant failed to establish under the Strickland standards either deficient performance by his former attorney or actual prejudice.

Even if one were to accept as true defendant's claim that he did not see the full MVR before trial, that alone would not itself

require his conviction to be set aside. Notably, defendant's certification does not assert that his trial attorney never advised him of the likely jury impact of what was shown on the MVR, or that defendant – who drove the vehicle at the scene – lacked knowledge of the actual events that occurred. To the contrary, defendant acknowledged at the plea cut-off hearing that he had discussed "everything" turned over by the State with his counsel.

Defendant's claim that he had not personally seen the full MVR, even if accepted as true, does not mean his attorney never discussed its contents with him. Nor was it vital for defendant to have seen the MVR himself, or, for that matter, the other items of discovery, in order for trial counsel to have provided him with sound legal advice about his options and the risks of trial.

Moreover, we agree with the PCR judge that it is abundantly clear that defendant – as he expressed it in his own words in his letter – was "hell bent" on going to trial, and that he would have not been persuaded to accept the plea offer, regardless of what the State's discovery contained. Under these circumstances, there was no reason for the PCR judge here to conduct an evidentiary hearing, even viewing the record, as we must, in a light most favorable to defendant. State v. Jones, 219 N.J. 298, 311 (2014); State v. Preciose, 129 N.J. 451, 462-63 (1992).

The remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.