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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4675-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY MONTGOMERY,

Defendant-Appellant.

Submitted October 19, 2017 – Decided December 20, 2017

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No. 08-
08-1839.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kisha M. Hebbon, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Carey J.
Huff, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

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

Defendant was convicted by a jury of first-degree carjacking and nine other criminal offenses as originally charged in an indictment.¹ On June 11, 2010, the sentencing court imposed an aggregate sentence in the extended term of life in prison without parole and a consecutive thirty-year term with eighteen and one-half years of parole ineligibility.

Defendant appealed and we affirmed his convictions, but reversed portions of his sentence and remanded for resentencing. State v. Montgomery, 427 N.J. Super. 403, 405 (App. Div. 2012).²

¹ The indictment charged defendant with second-degree eluding, contrary to N.J.S.A. 2C:29-2(b) (count one); second-degree aggravated assault by eluding, contrary to N.J.S.A. 2C:12-1(b)(6) and N.J.S.A. 2C:29-2(b) (count two); first-degree carjacking, contrary to N.J.S.A. 2C:15-2(a) (count three); third-degree aggravated assault, contrary to N.J.S.A. 2C:12-1(b)(5)(a) (count four); second-degree disarming a law enforcement officer, contrary to N.J.S.A. 2C:12-11(a) (count five); third-degree resisting arrest, contrary to N.J.S.A. 2C:29-2(a)(3) (count six); fourth-degree injury to a law enforcement animal, contrary to N.J.S.A. 2C:29-3.1 (count seven); second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(b) and N.J.S.A. 2C:58-4 (count eight); fourth-degree possession of a prohibited weapon, contrary to N.J.S.A. 2C:39-3 (count nine); and second-degree possession of a weapon by a convicted felon, contrary to N.J.S.A. 2C:39-7(b)(1) (count ten).

² We redacted our opinion to exclude our discussion regarding defendant's sentence. Those details are addressed in the

The trial court resentenced defendant in accordance with our remand, which made concurrent part of the aggregate sentence that had been consecutive to the life term. The Supreme Court denied defendant's petition for certification. State v. Montgomery, 213 N.J. 387 (2013).

The facts underlying defendant's convictions are set forth in our earlier opinion and need not be repeated here. See Montgomery, 427 N.J. Super. at 405.

Defendant filed a PCR petition on February 19, 2015, in which he argued in a brief that he received ineffective assistance of trial counsel because his attorney "failed to present a defense, communicate with [him], denied [defendant] discovery, was more interested in [defendant] taking a "plea deal" and . . . did not feel as though [defendant] would get a fair trial because of his incidents, in the county jail[.]" He also argued that his attorney did not "raise issues" or "preserve [defendant's] Constitutional issues." In a supporting certification, he added that counsel "failed to . . . prepare for trial, violated" applicable standards of conduct, allowed defendant to be shackled during trial, and failed to properly voir dire jurors.

unpublished version of our opinion. See State v. Montgomery, No. A-2192-10 (App. Div. Aug. 10, 2012) (slip op. at 35-36).

A brief and amended petition was submitted by PCR counsel on behalf of defendant in November 2015. In this brief, defendant expanded upon his claim that trial counsel failed to adequately prepare for trial or involve defendant in any preparation.

The PCR court denied defendant's petition by order dated May 3, 2016. In a comprehensive eleven-page written decision, Judge James M. Blaney explained the reasons for his denial of defendant's petition. The judge found that defendant's allegations about counsel having failed to prepare for trial or communicate with defendant about the trial, were belied by the record and were without any support. He also concluded defendant failed to establish that, even if counsel's performance was deficient, how the outcome of the trial would have been different had counsel provided effective assistance as argued by defendant.

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

POINT I:

THE TRIAL COURT ERRED IN DENYING
DEFENDANT'S PETITION FOR POST
CONVICTION RELIEF WITHOUT AFFORDING
HIM AN EVIDENTIARY HEARING TO
DETERMINE THE MERITS OF HIS
CONTENTION THAT HE WAS DENIED THE
RIGHT TO THE EFFECTIVE ASSISTANCE OF
COUNSEL.

A. THE PREVAILING LEGAL
PRINCIPLES REGARDING CLAIMS OF

INEFFECTIVE ASSISTANCE OF COUNSEL,
EVIDENTIARY HEARINGS AND PETITIONS
FOR POST CONVICTION RELIEF.

B. TRIAL COUNSEL RENDERED
INEFFECTIVE LEGAL REPRESENTATION BY
VIRTUE OF HIS FAILURE TO CONSULT
WITH DEFENDANT FOR A SUFFICIENT
PERIOD OF TIME PRIOR TO TRIAL AND
TO ENSURE THAT DEFENDANT HAD THE
OPPORTUNITY TO THOROUGHLY REVIEW
ALL DISCOVERY PRIOR TO TRIAL.

C. DEFENDANT IS ENTITLED TO
A REMAND TO THE TRIAL COURT TO
AFFORD HIM AN EVIDENTIARY HEARING TO
DETERMINE THE MERITS OF HIS
CONTENTION THAT HE WAS DENIED THE
EFFECTIVE ASSISTANCE OF TRIAL
COUNSEL.


We are not persuaded by any 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, 687 (1984), and adopted
by our Supreme Court in State v. Fritz, 105 N.J. 42, 49 (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, 466 U.S. at 687, 694.

We affirm substantially for the reasons expressed by Judge Blaney in his thorough decision as we are satisfied from our review of the record that defendant failed to make a prima facie showing of ineffectiveness of trial counsel within the Strickland/Fritz test. Accordingly, Judge Blaney correctly concluded that an evidentiary hearing was not warranted. See State v. Preciose, 129 N.J. 451, 462-63 (1992).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION