SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4850-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT GOFFNEY,

Defendant-Appellant.

Submitted February 13, 2017 – Decided March 1, 2017

Before Judges Sabatino and Nugent.

On appeal from Superior Court of New Jersey, Law Division, Camden County, Indictment No. 10-06-1776.

Joseph E. Krakora, Public Defender, attorney for appellant (Karen A. Lodeserto, Designated Counsel, on the brief).

Mary Eva Colalillo, Camden County Prosecutor, attorney for respondent (Robin A. Hamett, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Robert Goffney appeals from an April 17, 2015 Law Division order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

In June 2010, a Camden County grand jury charged defendant in an eight-count indictment with armed robbery, attempted murder, three counts of aggravated assault, two weapons offenses, and conspiracy. Defendant agreed to plead guilty to one count of first-degree robbery in exchange for the State recommending a thirteen-year custodial term subject to the No Early Release Act, N.J.S.A. 2C:43-7.2 and dismissing the remaining counts of the indictment. The court accepted the plea and sentenced defendant in accordance with the plea agreement.

Defendant appealed his sentence. His appeal was heard on a sentencing calendar pursuant to Rule 2:9-11. We affirmed. State v. Goffney, No. A-0134-11 (App. Div. Nov. 14, 2012).

Defendant filed his PCR petition in June 2014, whereupon the court assigned counsel who filed an amended petition and a brief.

Following oral argument on defendant's PCR petition, the court delivered an oral opinion from the bench denying the petition without an evidentiary hearing. Defendant filed this appeal.

To provide context for defendant's arguments, we briefly summarize the crime's commission. We derive the facts from

defendant's guilty plea and the police reports appended to defendant's appellate brief.

On a September evening in 2009, the victim was selling marijuana from his Pennsauken residence to co-defendant Edward Johnson when a black male, later identified as defendant, ran into the residence holding a gun. Defendant ordered everyone to get on the floor. The victim refused, a struggle ensued, and the perpetrator shot the victim twice before fleeing the residence. The victim described the perpetrator as a tall black male wearing glasses.

Several witnesses were either in the victim's residence at the time of the shooting or in other parts of the building. A witness named Wilson, who had driven co-defendant to the victim's residence, gave a statement to the police identifying co-defendant and also identifying defendant as the shooter. Wilson told police he recognized defendant as Robert Goffney, who attended Pennsauken High School. Wilson also told police that some time before the shooting, co-defendant stopped him at a convenience store and asked where he could buy marijuana. Goffney was in the co-defendant's car at that time. Subsequently, Wilson positively Goffney from a photo array.

Four other witnesses saw the shooter either enter or leave the victim's residence. One did not get a good look at the

perpetrator, while the other three could not identify defendant from photo arrays.

The day after the shooting, co-defendant told police defendant was the shooter and that he remembered defendant from high school. He then selected defendant's photo from an array. The police pulled other records and learned that co-defendant had been with defendant during an assault. However, he denied knowing defendant, even after police confronted him with the information concerning the previous assault.

According to a Pennsauken Police Department supplementary report, both defendant and co-defendants were "friends" on MySpace and Facebook, and their online profile pages contained photographs of them together dating back to high school. The report also showed co-defendant attempted to get defendant a job with his girlfriend's father.

Detectives obtained a Communications Data Warrant, which they issued for both defendant's and co-defendant's cellular phones. According to the police report, calls were exchanged among co-defendant, defendant, and a third person before, during and after the shooting.

Police interviewed the third person. He told them he was standing downstairs when defendant passed by him, gun in hand, and

ran upstairs to the victim's residence. This third person also told police co-defendant planned the robbery.

Against that backdrop, defendant filed his PCR petition. He alleged he "was not given a fair chance at proving [his] innocence, due to the fact that [his] attorney did not perform to the best of her abilities." Specifically, he alleged his counsel was ineffective for failing to move to suppress the out-of-court identifications from the photo arrays; failing to obtain defendant's phone records to demonstrate he was not communicating with the co-defendant at the time of the crime; failing to obtain Pennsauken High School records to show he did not go to high school, contrary to the statement made by a witness; failed to obtain records that would show, contrary to the statements of most witnesses, that he wore glasses; failed to investigate a witness's purported statement to a third party that he falsified an inculpatory statement to the police; and failed to investigate the purported statement of co-defendant that he would not testify against defendant at trial. Defendant alleged that due to the complete breakdown in his relationship with his attorney, he was essentially forced to take the State's plea offer.

On April 17, 2015, in an opinion delivered from the bench following oral argument, Judge John Thomas Kelley denied defendant's PCR petition. Judge Kelley noted defendant failed to

support his claim with any evidence to support his otherwise bald assertions. For example, Judge Kelley noted defendant failed to provide his phone records to support his argument that such records were exculpatory. Judge Kelley also rejected defendant's claim that his attorney failed to demand a Wade[1] hearing and failed to adequately investigate his case. The court believed these claims to be trial issues, which defendant waived when he voluntarily pled guilty.

After recounting relevant legal precedent, Judge Kelley concluded defendant had not supported his bald assertions with competent evidence, waived several of his claims by pleading guilty, and failed to establish a prima facie case of ineffective assistance of counsel. For those reasons, the judge denied defendant's petition.

On appeal, defendant raises a single argument:

> Point One
>
> DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING BECAUSE PLEA COUNSEL WAS INEFFECTIVE IN FAILING TO FULLY INVESTIGATE HIS MATTER PRIOR TO HIM PLEADING GUILTY.

[1] United States v. Wade, 388 U.S. 218, 87 S. Ct., 1926, 18 L. Ed. 2d 1149 (1967).

We affirm, substantially for the reasons expressed by Judge Kelley in his oral opinion. We add only the following brief comments.

In order to establish the two elements of an ineffective-assistance claim that are required by Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984) and State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey), a defendant must do more than make bald assertions that he was denied effective assistance of counsel; he must allege specific facts sufficient to demonstrate counsel's alleged substandard performance. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). For example, "when a petitioner claims his trial counsel inadequately investigated his case, he must assert the facts that an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Ibid.

Defendant would not have been entitled to a Wade hearing simply because he requested it.

We agree with Judge Kelley that defendant supported his ineffective-assistance claims with nothing more than bald assertions. He produced no certifications from witnesses, no phone records, and no school records. He has also failed to

demonstrate that the pre-trial identifications of his photograph were based on any impermissibly suggestive conduct on the part of the police, or were otherwise unreliable. In fact, both witnesses who made photographic identifications knew defendant.

Defendant's arguments are entirely without merit. R. 2:11-3(e)(2).

Affirmed.