SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3735-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

A.M.,

Defendant-Appellant.

Submitted February 12, 2018 – Decided April 6, 2018

Before Judges Messano and Accurso.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 08-09-1547.

Joseph E. Krakora, Public Defender, attorney for appellant (Janet A. Allegro, Designated Counsel, on the briefs).

Dennis Calo, Acting Bergen County Prosecutor, attorney for respondent (Jenny X. Zhang, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

A grand jury returned a thirty-count indictment charging defendant A.M. with sexually related crimes against several

different minor victims. Defendant moved to sever counts one through five, the motion was granted, and defendant was convicted at trial and sentenced to an eighteen-year term of imprisonment with an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. State v. A.M., No. A-4025-09 (App. Div. July 27, 2011) (A.M. I) (slip op. at 1-2). We affirmed defendant's conviction on direct appeal. Id. at 4.[1]

While the appeal was pending, defendant entered guilty pleas to counts eight and twenty-six of the indictment, charging him with second-degree attempted sexual assault on two other victims. The State agreed to recommend a maximum sentence of five years' imprisonment on each count, consecutive to each other but concurrent to the sentence already imposed on counts one through five. Defendant executed a written addendum agreeing that regardless of the outcome of his appeal, his guilty plea and sentence on counts eight and twenty-six would stand. Defendant also executed a stipulation that described, in the first person and in detail, the actions that made him guilty of the crimes

[1] Defendant filed a petition for post-conviction relief (PCR), which the trial court denied on December 2, 2014. We summarily affirmed the denial of defendant's PCR petition, State v. [A.M.], No. A-2338-14 (App. Div. Jan. 25, 2016), and the Supreme Court denied his petition for certification. 230 N.J. 605 (2017).

charged in counts eight and twenty-six. Under oath, defendant acknowledged that he read the stipulation, understood it and agreed it set forth what had occurred.

Defendant was not sentenced until April 2, 2012, more than one year after he pled guilty and nine months after we affirmed his conviction on counts one through five. Now represented by different counsel, defendant moved to withdraw his guilty pleas to counts eight and twenty-six. As we explained in our prior opinion, State v. A.M., No. A-0398-12 (App. Div. May 30, 2014) (A.M. II) (slip op. at 7), defendant asserted he was not guilty of the two charges and only agreed to the stipulated facts because of his attorney's lack of preparation, failure to investigate, and defendant's nervousness and belief that he had no choice based on his attorney's advice.

Judge Edward A. Jerejian, who had presided over the prior trial, the pre-trial conferences on the remaining counts and defendant's guilty plea, applied the factors enunciated in State v. Slater, 198 N.J. 145, 157-58 (2009), denied defendant's motion and sentenced him in accordance with the plea bargain. Defendant appealed, and we affirmed, remanding only for the judge to consider the appropriate penalty payable to the Sex Crime Victim Treatment Fund, N.J.S.A. 2C:14-10(a)(2). A.M. II, at 10-11.

Defendant filed a pro se PCR petition asserting a claim of ineffective assistance of counsel (IAC). He certified that trial counsel spoke to him only once by video conference prior to his guilty plea, never reviewed the discovery with him, and failed to move for further severance, subpoena records from the Division of Youth and Family Services as to one of the victims, hire an expert to "help evaluate the veracity [of the] allegations," or interview unnamed witnesses. Defendant claimed he was not guilty and was "forced to plead guilty due to . . . fear and anxiety" when he realized counsel was unprepared.

Among other things, PCR counsel asserted in his brief that the denial of defendant's motion to withdraw his guilty plea was "irrelevant" to consideration of defendant's IAC claim. He further explained during oral argument, "[t]his petition deals exclusively with [defendant's] view that his plea counsel should have spent more time meeting with him, should have consulted an expert and should have done some investigation regarding the [victim's] claims of sexual abuse."

Judge Jerejian reviewed the procedural history in detail. Referring to the transcript of the proceedings in which he denied defendant's Slater motion, the judge recounted the complicated plea negotiations and noted defendant's multiple "conferences" with plea counsel. The judge noted the matter was delayed "because

defendant wanted to see what was going to happen on the appeal." Referring to the earlier transcript of defendant's plea allocution, Judge Jerejian noted defendant said under oath he was satisfied with plea counsel's services and knowingly and voluntarily admitted his guilt. The judge noted the plea bargain was extremely favorable to defendant. Finding defendant's claims were "vague, conclusory or speculative," Judge Jerejian denied the petition.

Before us, defendant argues he was entitled to an evidentiary hearing on his IAC claims, specifically plea counsel's lack of preparation and advice that defendant plead guilty. He also contends Judge Jerejian employed the wrong legal standards, analyzing the petition under the Slater standards and not as one alleging IAC.

These arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add only the following.

We acknowledge different standards apply when deciding a motion to withdraw a guilty plea and when reviewing a PCR petition asserting IAC. See, e.g., State v. O'Donnell, 435 N.J. Super. 351, 368-72 (App. Div. 2014) (explaining in detail the differences). Although he provided significant detail regarding the denial of defendant's motion to withdraw his guilty plea, Judge Jerejian properly applied the two-prong test of IAC claims

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, 58 (1987).

We agree with the judge that defendant's assertions were "vague, conclusory or speculative" and did not justify an evidentiary hearing or any other relief. See State v. Porter, 216 N.J. 343, 355 (2013) (stating a defendant must produce "specific facts and evidence supporting his allegations"); State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) ("[W]hen a petitioner claims his trial attorney 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.").

In addition, "[i]n the PCR context, to obtain relief from a conviction following a plea, 'a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.'" O'Donnell, 435 N.J. Super. at 371 (quoting Padilla v. Kentucky, 559 U.S. 356, 372 (2010)). As Judge Jerejian noted, plea counsel struck a very favorable plea bargain for defendant that resulted in an aggregate ten-year sentence that most importantly would be served concurrently to defendant's sentence on counts one through five, and the dismissal of more

than twenty other counts of the indictment. Defendant's assertion that but for plea counsel's ineffective assistance, he would have rejected the plea bargain and gone to trial, see State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009), is completely irrational and unworthy of belief.

Affirmed.