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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5554-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAHEEM FIELDS,  
a/k/a LIL MOET,

Defendant-Appellant.

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Submitted September 27, 2017 — Decided February 23, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey,  
Law Division, Passaic County, Indictment No.  
10-07-0729.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Lee March Grayson, Designated  
Counsel, on the brief).

Camelia M. Valdes, Passaic County Prosecutor,  
attorney for respondent (Christopher W. Hsieh,  
Chief Assistant Prosecutor, of counsel and on  
the brief).

PER CURIAM

Defendant Shaheem Fields appeals the denial of his petition  
for post-conviction relief (PCR). In light of State v. Jones, 446

N.J. Super. 28 (App. Div.), certif. denied, 228 N.J. 72 (2016), we reverse and remand for the PCR court to determine the sole issue of whether defendant asked his trial counsel to file a direct appeal from his guilty plea and if so, to permit the filing of an appeal in forty-five days consistent with State v. Perkins, 449 N.J. Super. 309, 312-13 (App. Div. 2017). We affirm the denial of defendant's PCR on all other issues.

I

Defendant had an on-going dispute with Javon Kemp. In the early morning hours of March 10, 2006, defendant saw Kemp on the street and approached him. At the plea hearing, defendant acknowledged shooting Kemp five times with a .45 caliber handgun and that the fatal shot struck Kemp in the back. Defendant admitted that when he fired the shots, he knew Kemp was unarmed and was not attacking or trying to hurt him. He agreed that his actions in shooting Kemp "manifested extreme indifference" to whether his victim would live or die. Defendant also was aware, because of the nature of a prior conviction, that he was not to possess any weapons.

In March 2011, defendant pled guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), amended from first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one), and second-degree certain persons not to have weapons, N.J.S.A. 2C:39-

7(b) (count four). In return, the State agreed to dismiss second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count two), and second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count three). In April 2011, the trial court sentenced defendant consistent with the plea agreement to serve twenty-two years in prison, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, on count one and a concurrent eight-year prison sentence with five years of parole ineligibility on count four. Defendant did not file a direct appeal.

In 2015, defendant filed a pro se PCR petition, alleging ineffective assistance of counsel, and requested an evidentiary hearing. PCR counsel was appointed. In his supporting certification, defendant alleged his counsel should have requested a Miranda<sup>1</sup> hearing because he was under "mental duress" when interrogated by the police. He claimed his attorney failed to investigate his claim of self-defense and pressured him into pleading guilty, using "[his] limited mental capacity against [him]." He claimed he was illiterate when he pled guilty. He denied making a phone call from jail where he said he did not mean to kill the victim. Defendant said he asked his attorney to file an appeal but that none was filed.

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

On April 21, 2016, defendant's PCR petition was denied. In rejecting defendant's claims, the PCR court found that when defendant pled guilty, "he indicated that he could read, write and understand the English language . . . [,] had gone over the plea forms with his attorney, . . . [and] heard and understood the terms of the plea agreement . . . ." Defendant admitted to pleading guilty freely and voluntarily. Defendant claimed his attorney did not investigate his claim of self-defense, but the court found he did not assert what facts an investigation would have revealed. Defendant did not produce "any certifications from any witnesses exculpating him." In fact, defendant admitted at the plea hearing that when he fired the fatal shot, he knew Kemp was unarmed and not attacking him.

With respect to his claim of being pressured because of a lack of mental capacity, the court found the 2006 study team evaluation defendant relied upon had classified him as "emotionally disturbed" but did not prove that he had any diminished capacity when he committed the offenses. The court agreed with the State that defendant pled guilty "knowingly, willfully and with full understanding of the consequences of his guilty pleas and of his rights that he was waiving when he . . . pled guilty."

The PCR court rejected defendant's claim that his attorney should have requested a Miranda hearing regarding the phone call defendant allegedly made from jail where he admitted to the shooting death. The court determined that Miranda did not apply because the call did not involve a custodial interrogation. Defendant provided no proof he made any statement to the police that could have been suppressed based on Miranda. Because defendant did not point to any issues that would have been successful on appeal, the PCR court rejected defendant's claim that his counsel was ineffective by not filing a direct appeal.

Defendant appeals the April 21, 2016 order that denied the PCR petition, presenting the following issues:

POINT I

THE PCR COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS CONTENTIONS THAT DEFENSE COUNSEL IN THE TRIAL COURT WAS INEFFECTIVE.

A. TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE DID NOT DISCUSS THE CASE WITH THE DEFENDANT OR CONDUCT AN INVESTIGATION REGARDING DEFENSES, SUCH AS SELF-PROTECTION.

B. TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE ALLEGEDLY EXPLOITED THE DEFENDANT'S LIMITED MENTAL CAPACITY TO FORCE HIM INTO ACCEPTING THE PLEA BARGAIN.

C. TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE DID NOT FILE MOTIONS TO SUPPRESS STATEMENTS MADE DURING A CUSTODIAL INTERROGATION AND,

LATER, DURING A RECORDED PHONE CONVERSATION  
IN THE COUNTY JAIL.

D. THE PCR COURT ERRED BY NOT GRANTING THE  
DEFENDANT AN EVIDENTIARY HEARING.

We reverse and remand for the PCR court to determine whether defendant asked his trial counsel to file a direct appeal and if so, to allow forty-five days for that appeal. We are not persuaded by any of defendant's other arguments.

## II

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 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on an ineffective assistance of counsel claim, defendant must meet a two-prong test by establishing 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 694.

In the plea bargain context, "a defendant must prove 'that there is a reasonable probability that, but for counsel's errors, [he or she] would not have pled guilty and would have insisted on going to trial.'" State v. Gaitan, 209 N.J. 339, 351 (2012) (alteration in original) (quoting State v. Nunez-Valdez, 200 N.J. 129, 139 (2009)), and that "a decision to reject the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372 (2010). We agree with the PCR court that, except for the question of whether counsel was asked to file a direct appeal, defendant's claims did not meet the standards under Strickland and Fritz.

"[W]hen a petitioner claims his trial attorney inadequately investigated his case, he must assert facts an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." State v. Porter, 216 N.J. 343, 353 (2013) (alteration in original) (quoting State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)).

Defendant contends his attorney did not investigate his claim of self-defense. He alleged the victim threatened him and often was armed. We agree with the PCR court that defendant did not meet the required standard to obtain relief in light of his

admissions during the plea when he fatally shot Kemp, he knew the victim was not armed and was not attacking him.

Defendant alleged that counsel should have investigated his phone call from the jail where he acknowledged shooting Kemp. We agree with the PCR court, however, that because defendant did not allege his phone call from the jail was part of a custodial interrogation, Miranda would not apply. In fact, defendant presented no evidence he gave any custodial statements that could be the subject of a suppression motion.

We agree with the PCR court that defendant submitted no evidence he was pressured to plead guilty or that he did not understand the plea or the recommended sentence. In the transcript, defendant agreed that he understood all the terms of the plea and was pleading guilty freely and voluntarily. We agree with the PCR court that the 2006 educational plan did not show evidence of diminished capacity.

We are constrained to reverse and remand to the PCR court, however, on the direct appeal issue. In State v. Jones, 446 N.J. Super. 28, 30 (App. Div.), certif. denied, 228 N.J. 72 (2016) (relying on Roe v. Flores-Ortega, 528 U.S. 470, 484 (2000)), we reversed the denial of a PCR petition, holding that prejudice is presumed where defendant's undisputed sworn statement asserted that he directed his attorney to file an appeal, but no appeal was



filed. In State v. Perkins, 449 N.J. Super. 309, 312-13 (App. Div. 2017), we held "where a PCR judge finds that an appeal was sought by defendant and not filed due to counsel's ineffective assistance, the judge has the authority to afford defendant a forty-five day period to file an appeal." Jones and Perkins both were decided after defendant's PCR was denied.

Here, defendant's November 2015 certification alleged that no appeal was filed even though he asked his trial counsel to file one. His initial pro se petition did not include that allegation. The PCR court rejected defendant's direct appeal claim because he did not find that defendant articulated any issues for direct appeal. However, the case law cited requires us to remand to the PCR judge to determine whether defendant asked for a direct appeal that then was not filed. If so, the PCR court should enter an order, allowing defendant to file an appeal within forty-five days of the order.

Affirmed in part; reversed and remanded for proceedings consistent with this opinion only on the issue of the direct appeal. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION