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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0918-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ERIC D. WILLIAMS,
a/k/a ERIC BRYANT,
ERIC BRYANT-WILLIAMS,
ERIC B. WILLIAMS, and
ERIC B. BRYANT,

Defendant-Appellant.

Submitted March 21, 2022 – Decided April 5, 2022

Before Judges Fasciale and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 13-06-0804.

Joseph E. Krakora, Public Defender, attorney for appellant (Richard Sparaco, Designated Counsel, on the brief).

Scott A. Coffina, Burlington County Prosecutor,
attorney for respondent (Nicole Handy, Assistant
Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplement brief.

PER CURIAM

Defendant Eric D. Williams appeals from a May 29, 2020 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant contends his trial counsel rendered ineffective assistance. Judge Mark P. Tarantino thoroughly considered defendant's contentions and rendered a comprehensive seventeen-page written decision, on which we substantially agree. We affirm.

I.

On June 25, 2013, defendant was charged with first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2(a) (count one); first-degree murder, N.J.S.A. 2C:11-3(a)(1) and N.J.S.A. 2C:11-3(a)(2) (counts two and three); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count four); first-degree gang criminality, N.J.S.A. 2C:33-29(a) (count five); first-degree criminal attempted murder, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3(a)(1) (count six); and fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(4) (count

seven). The charges stemmed from defendant's role in two murders, which occurred in September 2008.

At the time of the indictment, defendant was serving a seventy-eight-month sentence in federal prison in Cumberland, Maryland, which commenced in February 2010. On June 27, 2013, the Burlington County Prosecutor filed a detainer against defendant pursuant to the Interstate Agreement on Detainers (I.A.D.), N.J.S.A. 2A:159A-1 to -15.

On February 24, 2014, defendant moved pro se to dismiss the indictment, claiming he invoked the I.A.D. when he executed a notice of untried indictment on July 12, 2013. Since more than 180 days elapsed and defendant had not been tried, he argued the indictment should be dismissed. On April 3, 2014, a prior judge denied defendant's motion on the basis the detainer filed on June 27, 2013 did not trigger the time provisions set forth in the I.A.D.

On October 23, 2014, pursuant to a negotiated plea agreement, defendant pled guilty to counts two and three of the indictment, as amended to first-degree aggravated manslaughter. As a condition of the plea agreement, defendant and co-defendant Tarrek Parker, agreed to plead guilty simultaneously.

On December 4, 2014, defendant appeared at his sentencing hearing. He disputed forty days of jail credit in his pre-sentence report and maintained he

was entitled to jail credits from the date the detainer was lodged against him. Alternatively, defendant asserted he was entitled to jail credits beginning on December 18, 2013, when he was transported to New Jersey from federal prison in Maryland.

After finding aggravating factors three and nine applied¹ and that no mitigating factors applied, the prior judge sentenced defendant to twenty years' imprisonment in New Jersey State prison on each count, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and five years of parole supervision after his release from prison. The sentences were ordered to run concurrently. Defendant was awarded 351 days of jail credit from December 18, 2013, to December 3, 2014. The remaining counts of the indictment were dismissed. No direct appeal was filed by defendant as to his convictions or sentences.

Defendant then filed a pro se petition for PCR on June 10, 2019. He alleged his trial counsel was ineffective for not requesting additional jail time credit and not persuading the sentencing judge to convert gap time credits to jail credits. Defendant sought dismissal of the indictment, claiming prosecutorial misconduct and an I.A.D. violation. The PCR judge assigned PCR counsel to

¹ Aggravating factor three is "[t]he risk that the defendant will commit another offense." N.J.S.A. 2C:44-1(a)(3). Aggravating factor nine is the need to deter defendant and others from violating the law. N.J.S.A. 2C:44-1(a)(9).

defendant on November 14, 2019. On January 13, 2020, PCR counsel filed an amended petition. On February 24, 2020, PCR counsel filed a second amended petition reiterating defendant's arguments set forth in his pro se PCR petition and the amended petition. In addition, PCR counsel contended defendant's sentence is illegal because he did not receive appropriate jail time credit from July 13, 2013, when the State detainer was lodged. An evidentiary hearing was requested.

On May 18, 2020, Judge Tarantino conducted oral argument on defendant's PCR petition and reserved decision. In his written opinion issued on May 29, 2020, Judge Tarantino found defendant's petition was procedurally barred because the issues raised in the petition should have been challenged in a direct appeal pursuant to Rule 3:22-3, not a PCR application. The judge noted the time for an appeal has "long since expired."

Nonetheless, despite the procedural bar, the judge addressed the merits of defendant's ineffective assistance of counsel claim. The judge found defense counsel was "at all times diligent and robust" in advocating for defendant relative to dismissal of the indictment, negotiating "[a] very reasonable plea agreement," and jail time credits. The judge highlighted that defendant's incarceration in federal prison was for an unrelated offense, and he failed to

demonstrate the detainer for the matter at hand extended his time in jail. Judge Tarantino found the jail credits should have been applied from the time defendant entered his guilty plea on October 23, 2014, citing State v. Council, 137 N.J. Super. 306 (App. Div. 1975), and not December 18, 2013, which the prior judge determined to be when the 120-day period started for scheduling the trial. This issue was never challenged by way of an appeal.

Judge Tarantino stressed defense counsel "did argue for [defendant]'s preferred date of June 27, 2013," and "was also astute enough to offer an alternate date of December 18, 2013," which served as the basis for the 351 days of jail credit. In conclusion, the judge reiterated the jail credit issue should have been addressed by way of an appeal, "and not under the guise of a PCR petition." A memorializing order was entered. This appeal followed.

On appeal, defendant raises the following argument for this court's consideration:

[POINT I]

THE COURT ERRED IN DENYING AN EVIDENTIARY HEARING ON DEFENDANT'S PETITION FOR [PCR].

- (a) Counsel For Defendant Was Ineffective For Not Obtaining Proof That Defendant Was Entitled To Additional Jail Credits Towards His Sentence

Due To An Extensive Increase In Prison Security
When The Detainer Was Lodged Against Him.

- (b) Counsel For Defendant Was Ineffective For Not
Obtaining Evidence To Counter The State's
Allegations That It Was Unaware Of Defendant's
Location As An Excuse For Extending The Time
Under The [I.A.D.]

In his pro se supplemental letter brief, defendant raises the following
points, which we renumbered:

POINT [II]

DEFENDANT SENTENCED ON JANUARY 2010;
AFTER SENTENCE DEFENDANT WAS
TRANSFERRED TO [FEDERAL CORRECTIONAL
INSTITUTION] (FCI) FORT DIX, NEW JERSEY, TO
SERVE HIS ORIGINAL SENTENCE OF [NINETY-
SIX] MONTHS; WHICH WAS REDUCED TO "FAIR
SENTENCE ACT," WHICH WAS AMENDED TO
[SEVENTY-EIGHT] MONTHS.

POINT [III]

DEFENDANT'S AGGRAVATING AND
MITIGATING FACTORS.

POINT [IV]

SENTENCING JUDGE ERRED IN NOT GRANTING
351 DAYS JAIL CREDITS. WHERE SENTENCE
WAS RAN CONCURRENT WITH THE SENTENCE
ALREADY BEING SERVED.

II.

When a PCR judge does not hold an evidentiary hearing—like here—this court's standard of review is de novo as to both the factual inferences drawn by the PCR judge from the record and the judge's legal conclusions. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016).

To establish a prima facie claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test enumerated in Strickland v. Washington, 466 U.S. 668, 687 (1984), which our Supreme Court adopted in State v. Fritz, 105 N.J. 42, 58 (1987). To meet the first Strickland/Fritz prong, a defendant must establish his or her "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687. A defendant must rebut the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." Id. at 689. Thus, this court must consider whether counsel's performance fell below an objective standard of reasonableness. Id. at 687-88.

To satisfy the second Strickland/Fritz prong, a defendant must show "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. A defendant must establish "a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 689. "[I]f counsel's performance has been so deficient as to create a reasonable probability that these deficiencies materially contributed to defendant's conviction, the constitutional right will have been violated." Fritz, 105 N.J. at 58.

A defendant is only entitled to an evidentiary hearing when he or she "has presented a prima facie [case] in support of [PCR]," meaning a "defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89, 158 (1997) (first alteration in original) (quoting State v. Preciose, 129 N.J. 451, 462 (1992)). A defendant "must do more than make bald assertions that he [or she] was denied the effective assistance of counsel" to establish a prima facie claim entitling him or her to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). A defendant bears the burden of establishing a prima facie claim. State v. Gaitan, 209 N.J. 339, 350 (2012). We "view the facts in the light most favorable to a defendant to determine whether a defendant has established a prima facie claim." Preciose, 129 N.J. at 462-63.

Certain procedural safeguards exist to protect against addressing issues in a piecemeal fashion. Under Rule 3:22-5, "[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding" or "in any appeal taken from such proceedings." "PCR will be precluded 'only if the issue is identical of substantially equivalent' to the issue already adjudicated on the merits." State v. Afanador, 151 N.J. 41, 51 (1997) (citations omitted) (quoting State v. McQuaid, 147 N.J. 464, 484 (1997)).

PCR proceedings are not a substitute for a direct appeal. R. 3:22-3; Afanador, 151 N.J. at 50. "Ordinarily, PCR enables a defendant to challenge the legality of a sentence or final judgment of conviction by presenting contentions that could not have been raised on direct appeal." Afanador, 151 N.J. at 49 (citing McQuaid, 147 N.J. at 482-83). "PCR cannot be used to circumvent issues that could have, but were not raised on appeal, unless the circumstances fall within one of three exceptions." Id. at 50 (emphasis omitted) (citing R. 3:22-4).

Those exceptions are: (1) "the ground for relief not previously asserted could not reasonably have been raised in any prior proceeding"; (2) "enforcement of the bar to preclude claims, including one for ineffective

assistance of counsel, would result in fundamental injustice"; or (3) "denial of relief would be contrary to a new rule of constitutional law under either the United States or the State of New Jersey." R. 3:22-4(a)(1)-(3). "The first exception is only available to a petitioner if he or she can show that the facts that form the basis for relief 'could not have been discovered earlier through the exercise of reasonable diligence.'" State v. Nash, 212 N.J. 518, 546 (2013) (quoting R. 3:22-4(a)(1)).

Judge Tarantino ruled defendant's PCR petition claims that his trial counsel was ineffective for not dismissing the indictment, and not securing appropriate jail credits, were barred under Rule 3:22-3. We agree. Moreover, the judge correctly determined that defendant failed to satisfy the Strickland/Fritz test. And, defendant did not provide any certifications or affidavits attesting to defense counsel's ineffectiveness. Defendant also failed to establish prima facie that counsel was ineffective by not "obtaining proof" that he was entitled to additional jail credits and by "not having evidence to counter the State's allegations that it was unaware of [his] location as an excuse for extending time under the [I.A.D.]." Thus, defendant failed to satisfy either prong of Strickland/Fritz and, as a result, did not establish a prima facie claim to warrant an evidentiary hearing.

To the extent not addressed, we determine the balance of defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION