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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2190-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASHEED DILLAHUNT,

Defendant-Appellant.

Submitted September 28, 2022 – Decided November 4, 2022

Before Judges Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 17-03-0617.

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

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Caitlin Raimo, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from a June 25, 2020 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

The following facts are derived from the record. On December 27, 2015, defendant was charged in Indictment No. 16-05-1441, arising out of a robbery in Livingston. Defendant was assigned a public defender, arraigned on the indictment and thereafter requested his attorney file a motion to dismiss, N.J.S.A. 2C:43-7.2. Dissatisfied with the public defender, defendant requested the public defender's removal.

In response to the motion to dismiss, the State obtained superseding Indictment No. 17-03-0617, which charged defendant with first-degree carjacking, N.J.S.A. 2C:15-2(a)(1) (count one); first-degree robbery, N.J.S.A. 2C:15-1 (count two); second-degree attempted kidnapping, N.J.S.A. 2C:5-1a (1) and N.J.S.A. 2C:12-1(b)(1) (count three); and third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(3)(a)(count four). Defendant's motion to dismiss was denied.

Defendant was then assigned a second public defender, who then filed another motion to dismiss the indictment. The second motion was denied after the State amended the robbery charge from first-degree to second-degree.

Defendant's family retained private counsel to represent defendant at trial. Defendant asked his new counsel to appeal the denial of his motion to dismiss the indictment and file a new motion seeking dismissal of the superseding indictment. Defendant contends counsel "agreed to do both of his requests."

At the pretrial conference held approximately two weeks prior to trial, defense counsel informed the trial judge he was preparing a motion to dismiss the superseding indictment. The trial judge declined to permit the filing of the motion before trial and directed counsel to raise the motion at the conclusion of the State's case at the time of trial. During the pretrial conference, the State extended a final plea offer to defendant. Under the State's plea offer, in return for defendant's guilty plea to second-degree robbery, the State would recommend a sentence of ten years with an eighty-five percent parole disqualifier under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The State proposed the term of imprisonment would be served concurrent to defendant's sentence for a federal parole violation and the State would be dismissing the remaining charges. Defendant was also informed since he was "extended-term eligible," if found guilty of carjacking at trial, the State would seek a term sentence of life in prison.

In his PCR petition, defendant claims he was ready to proceed on the scheduled trial date. But counsel said she was "unprepared for trial and

defendant should accept the plea offer." The trial was briefly adjourned and during that time, defendant and the State discussed a plea agreement. Thereafter, on April 5, 2018, defendant pleaded guilty to second-degree robbery.

At the plea hearing, defendant acknowledged reviewing the plea form with his attorney and understanding the proceeding. The judge extensively questioned defendant regarding the plea. Defendant acknowledged he understood the consequences of his plea. He further acknowledged he was satisfied with the services he received from his retained counsel and all of his questions were answered.

Based on defendant's responses, the judge was satisfied defendant understood his rights and the plea offer. The judge further determined defendant's guilty plea was voluntary and defendant provided an adequate factual basis for his plea.

In accordance with the negotiated plea agreement, the judge sentenced defendant to ten years with an eight-and-a-half-year parole bar. Defendant did not file a direct appeal.

On April 15, 2019, defendant, then pro se, timely filed a PCR petition. PCR counsel was assigned and filed a supplemental brief.

The PCR judge conducted a remote evidentiary hearing with the consent of defendant, who was in custody. In a June 25, 2020 order and accompanying written decision, the PCR judge denied defendant's petition.

II.

On appeal, defendant presents the following issues for our consideration.

POINT ONE

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR POST-CONVICTION RELIEF AS PRIOR COUNSEL WAS INEFFECTIVE IN FAILING TO PREPARE FOR TRIAL AND PRESSURED [DEFENDANT] TO PLEAD GUILTY.

POINT TWO

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] PETITION FOR POST-CONVICTION RELIEF AS PRIOR COUNSEL WAS INEFFECTIVE IN FAILING TO FILE A DIRECT APPEAL AS REQUESTED BY [DEFENDANT].

III.

Our "standard of review is necessarily deferential to a PCR court's factual findings," and findings "supported by sufficient credible evidence in the record" should be upheld. State v. Nash, 212 N.J. 518, 540 (2013).

A defendant in a criminal proceeding has the right to the assistance of counsel in his or her defense as guaranteed in the Sixth Amendment to the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution.

The right to counsel includes "the right to the effective assistance of counsel." Id. at 541 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)).

In Strickland, the Court established a two-part test, later adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987), as the standard applicable under the New Jersey Constitution, to determine whether a defendant has been deprived of the effective assistance of counsel. Strickland, 466 U.S. at 687. Under the first prong of the Strickland standard, a petitioner must show counsel's performance was deficient. Ibid. A petitioner must demonstrate counsel's handling of the matter "fell below an objective standard of reasonableness" and "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687-88.

Under the second prong of the Strickland standard, a defendant must "affirmatively prove" "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Strickland, 466 U.S. at 694). A defendant must demonstrate "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland, 466 U.S. at 687. "The error committed must be so serious as to undermine the court's

confidence in the jury's verdict or result reached." State v. Chew, 179 N.J. 186, 204 (2004) (citing Strickland, 466 U.S. at 694).

"With respect to both prongs of the Strickland test, a defendant asserting ineffective assistance of counsel on PCR bears the burden of proving his or her right to relief by a preponderance of the evidence." State v. Gaitan, 209 N.J. 339, 350 (2012) (citing State v. Echols, 199 N.J. 344, 357 (2009)); State v. Goodwin, 173 N.J. 583, 593 (2002). A failure to satisfy either prong of the Strickland standard requires the denial of a PCR petition. Strickland, 466 U.S. at 700; Nash, 212 N.J. at 542; Fritz, 105 N.J. at 52.

A. Guilty Plea

In the context of a guilty plea, a defendant must demonstrate: (1) counsel's performance was not "within the range of competence demanded of attorneys in criminal cases," and (2) "that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial." State v. DiFrisco, 137 N.J. 434, 457 (1994) (alteration in original) (quoting Tollett v. Henderson, 411 U.S. 258, 266 (1973) and Hill v. Lockhart, 474 U.S. 52, 59 (1985)). We find defendant's arguments unavailing.

Defendant's statements that he was dissatisfied with plea counsel's performance is belied by his own sworn statements placed on the record during the plea hearing. The PCR judge noted "defendant[']s bald assertion of his

innocence [was] unsupported by affidavit, certification or other competent evidence and [was] belied by his affirmation during his plea allocution in response to the court's question." The PCR judge went on to note the plea colloquy between defendant and the plea judge indicated defendant was satisfied with retained counsel's services and pleaded guilty voluntarily, without force or coercion from counsel. Defendant failed to demonstrate he would not have pleaded guilty but for retained counsel being unprepared for trial. As correctly stated by the PCR judge, "defendant was required, and fail[ed], to present specific, credible facts; and he does not and cannot point to any facts in the record which buttress his assertion." See State v. Slater, 198 N.J. 145, 158 (2009).

B. Trial Preparation

Defendant offers no competent proof that trial counsel failed to prepare for trial. As noted by the PCR judge, defendant's "bare assertion" was "unsupported by any independent evidence." The PCR judge found defendant's claim that "retained defense attorney had not familiarized herself with the case" was based on "pure speculation . . . without any support by way of certification, affidavit or other competent evidence other than the self-serving assertion [i]n the defendant[']s certification." Based on a review of the record, the PCR judge found defense counsel was familiar with defendant's case and ready to proceed

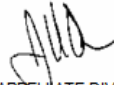
to trial. In support of this finding, the judge explained defense counsel requested reconsideration of the motion to dismiss the indictment and thorough examined defendant during the plea hearing. Defendant distorts the facts of the record during the plea hearing to claim counsel's performance was deficient and warranted post-conviction relief. Strickland, 466 U.S. at 689; State v. Hess, 207 N.J. 123 (2011).

Having reviewed the record, we are satisfied, as was the PCR court, that defendant's various claims of ineffective assistance of counsel do not meet either the performance or prejudice prong of the Strickland/Fritz test; and therefore, lack merit.

To the extent we have not expressly addressed any arguments made in support of defendant's appeal, we have determined they 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