SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2321-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSHUA C. McFARLAND,

Defendant-Appellant.

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Submitted December 6, 2022 – Decided December 14, 2022

Before Judges Sumners and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 14-11-1172.

Edward Crisonino, attorney for appellant.

LaChia L. Bradshaw, Burlington County Prosecutor, attorney for respondent (Jennifer Paszkiewicz, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

In August 2014, defendant knocked down a seventy-five-year-old woman while stealing her purse. The woman suffered a broken hip, broken arm, internal bleeding, and other injuries. Defendant was later arrested and charged with first-degree robbery, second-degree aggravated assault, and fourth-degree theft. By way of a negotiated agreement with the State, defendant pleaded guilty to first-degree robbery and was sentenced to an eleven-and-one-half-year prison term.

Defendant appealed, arguing the sentence was excessive. We disagreed and affirmed. State v. McFarland, No. A-0360-15 (App. Div. Mar. 9, 2016). Defendant timely filed a post-conviction relief petition, arguing, among other things, that his attorney was "laboring under a conflict of interest." In support of that argument, defendant submitted his mother's certification, in which she claimed defendant was "in the grip of terrible addiction to drugs and alcohol," and that she and other family members determined "a period of incarceration would most likely be . . . beneficial"; she also claimed this "idea" was "communicated" to defense counsel, who was "in con[s]ensus with the intent to not oppose incarceration," and that the attorney and defendant's family would collectively "proceed" accordingly. The PCR petition was denied without an evidentiary hearing.

Defendant appealed. We rejected all his arguments except we agreed he was entitled to an evidentiary hearing on the conflict-of-interest issue. We directed the judge to "factually determine whether the attorney that defendant's family retained was conflicted for any of the reasons asserted and whether that conflict warrants a finding of ineffectiveness under the Strickland/Fritz test."[1] State v. McFarland, No. A-4729-16 (App. Div. Dec. 12, 2018) (slip op. at 5).

Judge Gerard H. Breland, who had not presided over the prior proceedings, conducted a two-day evidentiary hearing during which he heard the testimony of defendant's trial attorney and defendant's parents, and then denied relief for the reasons set forth in a written decision.

Defendant appeals, arguing:

> I. COUNSEL WAS COMPLETELY INEFFE[CT]IVE UNDER CRONIC V. U.S.[2] AND THE PCR COURT SHOULD HAVE CONSIDERED THAT ISSUE AFTER [THE] EVIDENTIARY HEARING, NOT-WITHSTANDING THE LIMITS OF THE REMAND ORDER.

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[1] Strickland v. Washington, 466 U.S. 668, 687 (1984) declared that the Sixth Amendment requires a defendant, when seeking to demonstrate a denial of the effective assistance of counsel, to show the attorney's performance was deficient and the deficient performance prejudiced the defense. Our Supreme Court imposes this same test when a defendant argues that his similar state constitutional rights have been violated. State v. Fritz, 105 N.J. 42, 58 (1987).

[2] United States v. Cronic, 466 U.S. 648 (1984).

A. Counsel failed to consult with his client regarding the issues in the case.

B. Counsel failed to see issues with the client's statement and failed to realize that he needed an expert.

C. Counsel failed to explain the law regarding the charges . . . to which his client was pleading guilty.

II. THE PCR COURT FAILED TO CONSIDER THE CONFLICT, AS THE REMAND ORDER REQUIRED.

With the exception of new arguments defendant has posed, on which we do not opine,[3] we find insufficient merit in defendant's arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(2), and we affirm the order under review substantially for the reasons set forth in Judge Breland's written opinion, adding only the following few comments.

In making his fact findings, to which we must defer, State v. Elders, 192 N.J. 224, 243 (2007), Judge Breland relied on testimony that defendant's trial attorney vigorously worked toward obtaining a favorable plea bargain while

[3] Defendant has raised new issues in his first point, claiming his trial attorney was ineffective for failing to: adequately consult with him; oppose the admission of defendant's statement to police; and explain the elements of first-degree robbery. These contentions all fall outside the terms of our prior remand and outside the scope of Judge Breland's decision, which carefully adhered to our mandate. We, therefore, do not now consider these new arguments, nor do we decide whether they may be asserted in a future application to the trial court.

recognizing that because the State would not offer to amend the first-degree robbery charge, defendant was facing considerable exposure. The judge also recognized from the evidence offered at the evidentiary hearing that while defendant's mother may have possessed a belief that defendant was better off in the county jail or in a rehabilitation facility because of his substance abuse problem, those views, even if shared by counsel, had no bearing on the outcome. Defendant was charged with a first-degree offense, the elderly victim had been severely injured, the State possessed considerable evidence to convict defendant of that and the other charged offenses, and the State would not offer a plea bargain that would have led to defendant receiving anything less than a sizeable prison sentence. So, even assuming trial counsel agreed the best thing for defendant and his substance abuse problem would be his incarceration, in the final analysis – absent an unlikely acquittal at trial – defendant was going to end up in prison. The record relevant to the issues before us[4] suggests only that defense counsel zealously represented his client and that defendant received a lengthy prison sentence because it was deserved, not because his mother's goal may have been defendant's incarceration. In short, defendant failed to demonstrate the presence of either prong of the Strickland/Fritz test.

[4] Again, we express no view of defendant's new arguments, see n.3, at this time.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION