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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2811-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GIDDEL GONZALEZ-ESTRADA,

Defendant-Appellant.

Submitted April 4, 2022 – Decided April 14, 2022

Before Judges Fasciale and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 18-10-1305.

Joseph E. Krakora, Public Defender, attorney for appellant (Abby P. Schwartz, Designated Counsel, on the brief).

Lori Linskey, Acting Monmouth County Prosecutor, attorney for respondent (Lisa Sarnoff Gochman, of counsel and on the brief).

PER CURIAM

After pleading guilty, defendant appeals from a March 25, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant maintains his plea counsel rendered ineffective assistance. Judge Paul X. Escandon entered the order and rendered a comprehensive written decision.

A grand jury charged defendant with committing forty-eight drug and weapons-related crimes. In January 2019, he pled guilty to second-degree distribution of cocaine, N.J.S.A. 2C:35-5(b)(2) and N.J.S.A. 2C:35-5(c); first-degree possession of cocaine with intent to distribute, N.J.S.A. 2C:35-5(b)(1); and second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1). The State dismissed the remaining charges.

Although these three crimes exposed defendant to forty years in prison, plea counsel negotiated a ten-year prison sentence with forty-two months of parole ineligibility. In May 2019, the sentencing judge followed the plea agreement. Instead of filing a direct appeal, defendant filed a pro se PCR petition in August 2019. He filed an amended petition in July 2020, and counsel for defendant filed a brief in support of the petition in October 2020. Following oral argument and after issuing a written opinion, the judge entered an order denying the petition.

On appeal, defendant argues:

[PLEA] COUNSEL WAS INEFFECTIVE BY FAILING TO FILE A MOTION FOR A BRADY¹ HEARING SO THAT DEFENDANT [COULD] KNOW THE WHOLE CASE AGAINST HIM.

We affirm.

Defendant did not explicitly identify Brady materials in his petition or before the PCR judge. Rather, defendant contended in his PCR petition that plea counsel generally failed to investigate the charges and prepare for sentencing.² If defendant had filed a direct appeal, he could have argued the State failed to comply with Brady because such a contention is not dependent on information outside the record. The petition is therefore barred under Rule 3:22-4(a) since none of the exceptions apply. We will nevertheless address the merits even though defendant's petition did not include supporting affidavits or certifications.

¹ Brady v. Maryland, 373 U.S. 83 (1963).

² On appeal, defendant abandoned four out of the five grounds he specifically raised before the PCR judge. Defendant concentrates for the first time on specific Brady material. He did not do that before the PCR judge and instead merely made general assertions.

I.

When a PCR judge does not conduct an evidentiary hearing—like here—we review the PCR judge's factual findings and legal conclusions de novo. See 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 Court adopted in State v. Fritz, 105 N.J. 42, 58 (1987). Defendant has not met either prong.

A.

To meet the first Strickland/Fritz prong, a defendant must establish that his counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." 466 U.S. at 687. The defendant must rebut the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." Id. at 689. Thus, we consider whether counsel's performance fell below an objective standard of reasonableness. Id. at 687-88.

Defendant makes bald assertions that are insufficient to satisfy the first prong. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) (addressing the need for supporting affidavits or certifications). He did not do

so before the PCR judge or on appeal. Indeed, defendant expressed at his plea hearing satisfaction with plea counsel. He argues for the first time that law enforcement conducted an improper investigation in a school zone. Such an assertion amounts to a bald assertion. Contrary to defendant's contention, the investigation reports turned over to plea counsel demonstrate the full scope of the investigation. There is no support for defendant's argument that the prosecutor's office withheld evidence.

Plea counsel followed defendant's desire to plead guilty in exchange for the State's lenient plea offer, and defendant did not want pre-trial motions filed. Plea counsel reiterated to the sentencing judge that defendant wanted to cooperate and wished to plead guilty. In fact, at sentencing, plea counsel argued for mitigating factor number twelve (willingness to cooperate with law enforcement). Filing a Brady motion, especially one without sufficient basis, is inconsistent with defendant's desire to cooperate and obtain, as is the case, a favorable plea deal.

B.

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." 566 U.S. 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 694. "[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. Pertinent here, in the context of plea offers, "a defendant must show the outcome of the plea process would have been different with competent advice." Lafler v. Cooper, 566 U.S. 156, 163 (2012).

Defendant has shown no prejudice or that there is a reasonable probability that but for plea counsel's purported errors, he would not have pled guilty insisting on a trial. The evidence of guilt was overwhelming. Defendant sold cocaine to a task officer on eight separate occasions between March and July 2018. He possessed more than five ounces of cocaine with intent to distribute, which was borne out in the items seized after the search of defendant's garage, including the revolver.

II.

A defendant bears the burden of establishing a prima facie claim. State v. Gaitan, 209 N.J. 339, 350 (2012). A defendant is entitled to an evidentiary

hearing if the facts viewed "in the light most favorable to defendant," would entitle him to PCR. State v. Marshall, 148 N.J. 89, 158 (1997) (quoting State v. Preciose, 129 N.J. 451, 462-63 (1992)); R. 3:22-10(b). "If, with the facts so viewed, the PCR claim has a reasonable probability of being meritorious, then the defendant should ordinarily receive an evidentiary hearing in order to prove his entitlement to relief." State v. Jones, 219 N.J. 298, 311 (2014). A defendant must "do more than make bald assertions that he was denied the effective assistance of counsel" to establish a prima facie claim entitling him to an evidentiary hearing. Cummings, 321 N.J. Super. at 170. On this record, defendant has been unable to demonstrate a hearing is warranted.

Affirmed.

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



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