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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3419-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JESUS M. QUINONES,

Defendant-Appellant.

Submitted November 29, 2022 – Decided December 14, 2022

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 17-12-3711.

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

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

PER CURIAM

Defendant Jesus Quinones appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

On June 7, 2017, defendant and three others were arrested while fleeing a crime scene. A seventeen-count indictment charged defendant with second-degree conspiracy to commit robbery, three counts of first-degree robbery, second-degree burglary, three counts of third-degree criminal restraint, three counts of third-degree terroristic threats, two counts of second-degree unlawful possession of a weapon, two counts of second-degree possession of a weapon for an unlawful purpose, and two counts of fourth-degree tampering with physical evidence.

Defendant entered into a plea agreement. On January 9, 2018, he pled guilty to one count of the following crimes: conspiracy to commit robbery, robbery, burglary, and unlawful possession of a weapon, in exchange for a recommended fifteen-year aggregate term, subject to the eighty-five percent period of parole ineligibility and mandatory five-year period of parole supervision imposed by the No Early Release Act, N.J.S.A. 2C:43-7.2, and dismissal of the remaining counts.

The trial court found aggravating factors three (risk defendant will commit another offense), N.J.S.A. 2C:44-1(a)(3), and nine (need for deterring defendant

and others from violating the law), N.J.S.A. 2C:44-1(a)(9), and no mitigating factors. Defendant was sentenced in accordance with the plea agreement. He received a fifteen-year NERA term for the robbery, a seven-year term for the burglary, and a seven-year term for the unlawful possession of a weapon, subject to a forty-two-month period of parole ineligibility pursuant to the Graves Act, N.J.S.A. 2C:43-6(c), with all terms running concurrently. The conspiracy to commit robbery was merged into the robbery, and the other counts were dismissed.

Defendant appealed his sentence, arguing it was excessive. We considered the appeal on a sentencing calendar pursuant to Rule 2:9-11, and affirmed the sentence, concluding it "[was] not manifestly excessive or unduly punitive and [did] not constitute an abuse of discretion."

On February 5, 2020, defendant filed a timely PCR petition that alleged ineffective assistance of counsel on three grounds: (1) trial counsel did not explore alternative options to pleading guilty and pressured defendant to plead guilty; (2) trial counsel failed to explain what parole supervision meant; and (3) trial counsel should have negotiated a plea to second-degree robbery because defendant did not harm the victim.

Regarding his claim that trial counsel pressured him to plead guilty, defendant stated:

My attorney, D.S., pressured me to plead guilty. Every conversation we had was about me pleading guilty. My lawyer failed to have any meaningful discussions with me about my case and failed to develop any defenses with me. He just told me to plead guilty.

I may have said I was not pressured to plead guilty and satisfied with my lawyer [at the plea hearing], but that was not true. I was just afraid to speak out.

As to his claim that trial counsel did not explain parole supervision, defendant stated:

My attorney also failed to explain to me what [five] years of parole supervision meant. It was mentioned during my plea and sentence hearings, but I did not know what it meant until recently. My lawyer just told me to shake my head and agree that I understood what parole supervision meant, but I did not understand what it entailed.

Regarding his claim that trial counsel should have negotiated a plea to second-degree robbery, defendant stated:

I also wanted my lawyer to negotiate a second-degree robbery on my behalf because I did not harm the victim. I may have been armed with a gun, but I never used it against the victim and never hit the victim with the gun. The victim was not physically harmed and never sought medical treatment. My lawyer should have argued for a second-degree crime, thereby reducing my sentence exposure.

The PCR court rejected defendant's arguments. The court noted defendant did not allege that but for trial counsel's deficient performance, he would have rejected the fifteen-year NERA plea offer and proceeded to trial.

Regarding undue pressure, the court found defendant's "bald accusation of pressure [was] facially insufficient to support an ineffectiveness claim." The court noted that "any pressure claim [was] refuted by defendant's repeated statements during the plea colloquy, and in the plea form[,] that the plea was voluntary, and that no threats were made." The court further stated:

During the plea colloquy, defendant acknowledged that he read the plea form, and understood what he read. He further testified that he truthfully answered the [] questions posed on that form. These questions included have any promises, other than those mentioned on this form or any threats been made in order to cause you to plead guilty? Defendant responded no. He further stated that he was satisfied with the services of his lawyer. Defendant further acknowledged that he made the decision to plead guilty, that no one forced him to make that decision, and he made that decision of his own freewill. . . .

Concerning his interactions with trial counsel, defendant admitted that he had enough time to discuss the guilty plea decision with counsel who answered all of his questions. In response to this court's inquiry are you satisfied with the job that he continues to do for you? [Defendant] unequivocally responded yes sir.

The trial court emphasized that:

[Defendant] was facing three first[-]degree robbery counts[,] each alleging a separate victim, and each punishable by a maximum of [twenty] years in New Jersey State prison subject to [an eighty-five] percent period of parole ineligibility pursuant to NERA[,] [a]nd for which there was, absent a guilty plea with a negotiated resolution, the distinct possibility that if [defendant] was convicted after trial . . . consecutive terms could be imposed

The trial court continued:

While this court will not speculate as to whether [it] would have imposed the maximum term on each of the robberies, suffice it to say . . . that through the efforts of [trial counsel, defendant's] upward exposure was significantly reduced to [fifteen] years.

The court did not find any deficient performance by trial counsel in recommending a fifteen-year term as defendant "was provided with a rational array of options, and chose[] to . . . plea[d] guilty."

The court also found the plea form and plea colloquy established that defendant understood the meaning of parole supervision. It specifically noted that defendant responded in the affirmative when asked whether he understood that portion of his sentence.

Finally, the trial court found that counsel could not reasonably have negotiated for a second-degree robbery. It noted that defendant's claim that he did not inflict bodily injury was contradicted by video evidence. The court

explained that even if defendant did not inflict bodily injury, the point was "legally irrelevant" because "bodily injury is [] not an element of robbery."

The court found the record supported the conclusion that there was no ineffective assistance of counsel, and that an evidentiary hearing was not necessary. This appeal followed.

Defendant raises the following point for our consideration:

DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL PRESSURED HIM TO ENTER A PLEA OF GUILTY, FAILED TO EXPLAIN THE MEANING OF THE POST RELEASE FIVE-YEAR PAROLE SUPERVISION, AND FAILED TO ARGUE FOR A SENTENCE IN THE SECOND-DEGREE RANGE, IN VIOLATION OF DEFENDANT'S RIGHTS TO A FAIR TRIAL AND DUE PROCESS.

A. Counsel Pressured Defendant To Enter Pleas of Guilty.

B. Counsel Was Ineffective As He Failed To Explain The Five-Year Period Of Parole Supervision That Followed Incarceration.

C. Counsel Was Ineffective For Failing To Argue For A Plea To A Second-Degree Offense Or To Argue For A Sentence In The Range Of Second-Degree Offenses.

On appeal, defendant largely reiterates the arguments he made to the PCR court. We are unpersuaded.

"Where, as here, the PCR court has not conducted an evidentiary hearing, we review its legal and factual determinations de novo." State v. Aburoumi, 464 N.J. Super. 326, 338-39 (App. Div. 2020) (citing State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018)). To establish an ineffective assistance of counsel claim, "a defendant must demonstrate: (1) counsel's performance was deficient; and (2) the deficient performance actually prejudiced the petitioner's defense." Id. at 339 (citing Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987)). "That is, the defendant must establish, first, that 'counsel's representation fell below an objective standard of reasonableness' and, second, that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" State v. Alvarez, 473 N.J. Super. 448, 455 (App. Div. 2022) (quoting Strickland, 466 U.S. at 688, 694).

When a guilty plea is involved, "a defendant must show that (i) counsel's assistance was not 'within the range of competence demanded of attorneys in criminal cases'[] and (ii) '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. Nuñez-Valdez, 200 N.J. 129, 139 (2009) (second alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457

(1994)). "In other words, 'a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.'" Aburoumi, 464 N.J. Super. at 339 (quoting State v. O'Donnell, 435 N.J. Super. 351, 371 (App. Div. 2014)). "The petitioner must ultimately establish the right to PCR by a preponderance of the evidence." O'Donnell, 435 N.J. Super. at 370 (citing State v. Preciose, 129 N.J. 451, 459 (1992)).

Defendant has not established a claim for ineffective assistance of counsel. First, as the trial court noted, defendant's claim that trial counsel pressured him is belied by the record. During the plea hearing, the following exchange occurred between the trial judge and defendant:

Q. Now, the decision to plead guilty here this afternoon; who ultimately made that choice or decision?

A. Myself, Sir.

Q. Anyone force you?

A. No, Sir.

Q. So you're making that decision of your own free will?

A. Yes, Sir.

.....

Q. Have you had enough time to . . . discuss this decision and all of its consequences with [trial counsel]?

A Yes, Sir.

Q. Has he answered all your questions?

A. Yes, Sir.

Q. And are you satisfied with the job he continues to do for you?

A. Yes, Sir

Second, defendant's assertion that trial counsel failed to explain the meaning of post-release parole supervision is also belied by the record. As noted, defendant testified that he had enough time to discuss the consequences of the guilty plea with trial counsel, and that trial counsel had answered all his questions. The supplemental plea form for NERA cases asked defendant if he understood that if he pled guilty to first-degree robbery "the court must impose a [five]-year term of parole supervision and that term will begin as soon as you complete the sentence of incarceration." Defendant answered, "yes." The plea form also asked defendant if he understood that if he violated the conditions of his parole supervision that his parole may be revoked and he may be subject to return to prison to serve any portion of the remaining period of parole

supervision, even if he had completed serving the term of imprisonment previously imposed. Defendant answered, "yes."

The plea hearing also confirmed that defendant understood the post-release parole supervision aspect of his sentence. Defendant acknowledged under oath that he read the plea forms, that he understood what he read, that the answers on the plea forms were his answers, that his answers were truthful, that he initialed the first five pages and signed the last three pages of the plea forms after completing them with trial counsel, and that he understood there was a five-year period of post-release supervision for the first-degree robbery.

A guilty plea must be entered "knowingly, intelligently and voluntarily." State v. J.J., 397 N.J. Super. 91, 98-99 (App. Div. 2007). Counsel must not "provide misleading, material information that results in an uninformed plea." Núñez-Valdez, 200 N.J. at 139-40, 143. Here, there is no basis to conclude that trial counsel provided misleading information or that defendant was uninformed. Defendant's own answers and testimony indicate otherwise.

Finally, defendant's assertion that trial counsel should have negotiated a better plea agreement is likewise not supported by the record. As the PCR court noted, defendant received a favorable plea agreement considering the charges he faced, the evidence of guilt, and his potential exposure to lengthy,

consecutive prison terms. Indeed, defendant was charged with seventeen offenses, including three first degree robbery charges.

The evidence of defendant's involvement in the crimes was compelling. A video recording showed defendant pointing a firearm at the base of the skull of the male victim and punching him while demanding the location of the robbery proceeds. As correctly noted by the PCR court, the video also showed defendant's co-conspirators zip tying the male victim, pointing a gun at the female victim while she was holding a child, and heating up a knife over an open flame as a threat. The video confirmed that defendant was a willing participant in the actions of his co-conspirators. Moreover, defendant and his three co-conspirators were arrested in a vehicle departing from the crime scene, and police recovered the robbery proceeds from within that vehicle. At the time of arrest, "defendants were wearing the clothing which was depicted in the video."

Lastly, we address defendant's argument that the trial judge improperly denied his request for an evidentiary hearing. "We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion." State v. Peoples, 446 N.J. Super. 245, 255 (App. Div. 2016) (citing Preciose, 129 N.J. at 462).

Rule 3:22-10(b), which governs evidentiary hearings, provides:

A defendant shall be entitled to an evidentiary hearing only upon [1] the establishment of a prima facie case in support of post-conviction relief, [2] a determination by the court that there are material issues of disputed fact that cannot be resolved by reference to the existing record, and [3] a determination that an evidentiary hearing is necessary to resolve the claims for relief.

"A prima facie case is established when a defendant demonstrates 'a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.'" State v. Porter, 216 N.J. 343, 355 (2013) (quoting R. 3:22-10(b)). A defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." Ibid. (quoting State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)). Rather, defendant's claim must be supported by "specific facts and evidence." Ibid. "[A] defendant is not entitled to an evidentiary hearing if the 'allegations are too vague, conclusory, or speculative.'" Ibid. (quoting State v. Marshall, 148 N.J. 89, 158 (1997)).

Here, the PCR court correctly found that defendant did not establish a prima case for PCR. Defendant does not even assert that "but for" trial counsel's alleged errors he would have "insisted on going to trial." Nuñez-Valdez, 200 N.J. at 139 (quoting DiFrisco, 137 N.J. at 457). Moreover, as we have explained,

defendant's proffered arguments lack merit. As a result, an evidentiary hearing was properly denied.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION