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APPROVAL OF THE APPELLATE DIVISION**

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-0421-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSE MORA-CORTEZ, a/k/a
JOSE CORTEZ, JOSE MORA,
JOSE MORACORTEZ, and
DARIO CRUZ,

Defendant-Appellant.

Submitted February 27, 2023 – Decided March 17, 2023

Before Judges Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law
Division, Somerset County, Indictment No.
14-05-0298.

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

John P. McDonald, Somerset County Prosecutor,
attorney for respondent (Lauren H. Fox, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jose Mora-Cortez appeals from the July 30, 2021 order denying his petition for post-conviction relief (PCR) following an evidentiary hearing. We affirm.

I.

On March 7, 2014, defendant was a passenger in a motor vehicle a police officer stopped because it did not have a license plate and failed to signal for a turn. The officer smelled raw marijuana coming from within the vehicle. When the officer searched defendant, he found MDMA, also known as Ecstasy, in defendant's pocket. Defendant was subsequently indicted for possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)(1). He pled guilty in exchange for a proposed term of non-custodial probation and was subsequently sentenced to three years of non-custodial probation. Defendant did not appeal.

Defendant filed a PCR petition, and the court granted an evidentiary hearing. Following the hearing, the PCR court, as discussed more fully below, denied his petition. On appeal, defendant limits his argument to the following issue:

POINT ONE

[DEFENDANT] IS ENTITLED TO RELIEF ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY MISADVISING HIM ABOUT THE DEPORTATION CONSEQUENCES OF HIS PLEA.

II.

Our review where the court has conducted an evidentiary hearing on a defendant's PCR petition "is necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013). Where an evidentiary hearing has been held, we should not disturb "the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting Nash, 212 N.J. at 540). We review any legal conclusions of the PCR court de novo. Nash, 212 N.J. at 540-41.

In seeking PCR, a defendant must prove counsel was ineffective by a preponderance of the evidence. State v. Gaitan, 209 N.J. 339, 350 (2012). Initially, a defendant must prove counsel's performance was deficient by demonstrating 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." Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Fritz, 105 N.J.

42, 58 (1987) (adopting Strickland). Secondly, a defendant must prove counsel's "deficient performance prejudiced the defense." Strickland, 466 U.S. at 687. Prejudice is established by showing a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. Thus, to warrant reversal of the challenged conviction, a defendant must establish counsel's performance was deficient and that the defendant suffered prejudice. Id. at 687; Fritz, 105 N.J. at 52.¹

"It is now well-settled that a defense attorney 'must tell a client when removal is mandatory – when consequences are certain –' in order to provide effective assistance of counsel." State v. L.G.-M., 462 N.J. Super. 357, 365 (App. Div. 2020) (quoting Gaitan, 209 N.J. at 380). "Accordingly, 'when counsel provides false or affirmatively misleading advice about the deportation consequences of a guilty plea, and the defendant demonstrates that he would not have pled guilty if he had been provided with accurate information, an

¹ In the context of a guilty plea, a defendant must establish "that there is a reasonable probability that, but for counsel's errors, [he or she] would not have pled guilty and would have insisted on going to trial." Gaitan, 209 N.J. at 351 (alteration in original) (quoting State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009)). A defendant must also convince the court that "a decision to reject the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372 (2010).

ineffective assistance of counsel claim has been established.'" Ibid. (quoting Gaitan, 209 N.J. at 351).

Here, the PCR judge noted defendant alleged he had conversations off the record with defense counsel who led him to believe his plea would not subject him to deportation. The court found defendant's contention "in direct conflict" with the testimony at the PCR hearing and what transpired during the plea hearing. At the plea hearing, defendant's trial counsel, after noting on the record defendant was not a United States citizen, confirmed defendant reviewed the plea form and that defendant understood he "could easily be deported" for the offense to which he was entering a guilty plea. Defendant acknowledged defense counsel sent him to confer with an immigration attorney and ultimately consulted with two immigration attorneys. He further conceded at the PCR hearing both immigration attorneys advised him "there's a high chance of deportation" if he entered the guilty plea.

The PCR court concluded, "[i]t is clear [defendant] was advised that deportation was likely by not one but two immigration attorneys." The court further found,

[b]ased on the record of the plea colloquy alone, it appears [defendant] did in fact give a knowing and voluntary waiver of his rights and was advised of the immigration consequences of taking a guilty plea. The

[c]ourt now having heard at the evidentiary hearing the clearly credible testimony of trial counsel, is convinced [defendant] was well aware and understood the possible immigration consequences prior to his plea.

Lastly, the court commented, "[t]his [c]ourt is of the view that trial counsel acted properly, professionally, and moreover, testified credibly. As a result, the [c]ourt finds no fault in his representation"

Having considered the record, we are in accord with the PCR judge's determination defendant failed to prove both prongs of the Strickland standard. We affirm substantially for the reasons set forth in the PCR judge's written decision, which is amply supported by the record and is entitled to our deference. Nash, 212 N.J. at 540.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION