SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0824-21

STATE OF NEW JERSEY,

     Plaintiff-Respondent,

v.

SHANIEL N. HENRY,

     Defendant-Appellant.

_____

> Submitted December 19, 2022 – Decided March 1, 2023
>
> Before Judges Whipple and Smith.
>
> On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Accusation No. 16-06-0540.
>
> Joseph E. Krakora, Public Defender, attorney for appellant (Suzannah Brown, Designated Counsel, on the brief).
>
> Matthew J. Platkin, Attorney General, attorney for respondent (Ashlea D. Newman, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Shaniel Henry appeals from a September 30, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm for the reasons expressed in the oral decision of Judge Ronald B. Sokalski.

On July 11, 2016, defendant was charged with third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(12), after he punched his girlfriend with a closed fist and grabbed her around the neck, stopping her breathing for a time. He pleaded guilty to the charge the following August. In return, the State recommended a sentence of non-custodial probation, along with participation in certain services and no contact with the victim.

During the plea colloquy, defendant informed the judge he was born in Jamaica and had a green card. In response to the court's questioning, defendant said he understood his guilty plea may result in deportation, and counsel explained defendant had consulted an immigration attorney regarding the consequences of a guilty plea to a previous, "similar" drug charge. Counsel explained both charges would have negative immigration consequences, and defendant acknowledged this was true. When the court asked defendant if he would like the opportunity to talk to an immigration attorney about pleading guilty to the assault charge, defendant responded he would not. The court then

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told defendant because he would not seek legal advice for this charge, the only circumstance under which it would take his plea is if defendant understood that he would be deported if he pleaded guilty to the charge. Defendant replied he understood and still wanted to plead guilty.

Additionally, defendant indicated on his plea form he understood his guilty plea may result in removal, and that he would not like the opportunity to seek further advice from an immigration attorney. He was thereafter sentenced to three years of probation.

Defendant was detained by the United States Immigration and Customs Enforcement in July 2017. In February 2020, he filed a pro se petition for PCR, in which defendant asserted his attorney was ineffective because he failed to give defendant the opportunity to consult an immigration attorney. Defendant was assigned counsel, who additionally argued defendant's plea was not knowingly, voluntarily, or intelligently entered because trial counsel failed to have meaningful discussions with him or develop any defenses.

Defendant certified counsel told him he would not be deported and therefore did not need to consult an immigration attorney before pleading guilty. Defendant also contended he "told the court [he] understood [he] would be

deported but [he] really did not know because" his attorney advised him he would not be deported.

Judge Sokalski heard argument on September 30, 2021. After argument, the court issued an oral opinion denying the petition. The court reasoned, first, that defendant's contentions he pleaded guilty only because his attorney pressured him, and that his attorney failed to develop defenses or have meaningful discussions with him, were "bald assertions" undeserving of an evidentiary hearing. Additionally, the State's case against him was strong, and defendant could not show how he was prejudiced by his attorney's performance.

Turning to defendant's other argument—that his attorney failed to properly advise him of any immigration consequences—the PCR court found the record directly contradicted such an assertion. Judge Sokalski pointed specifically to the fact the plea judge would only accept defendant's plea if defendant understood he would certainly be deported. Defendant clearly told the judge he understood. The PCR court also noted defendant answered question 17(b) on the plea form—informing him that his plea may result in removal from the United States—affirmatively. At the plea hearing, when defendant's counsel explained an immigration attorney had already advised defendant that a previous

charge would have a negative impact on his immigration status, defendant agreed.

Further, the court observed, defendant told the judge at the plea hearing he did not wish to have the opportunity to consult an immigration attorney. He indicated the same on the plea form, in response to question 17(e).

Considering these facts, the PCR court determined defendant failed to establish a prima facie case of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984): "[Defendant's attorney] was not deficient in his performance and defendant has not sustained any prejudice." As a result, defendant was not entitled to an evidentiary hearing, and his petition was denied.

In this appeal, defendant raises only one of the arguments he raised at the trial level:

> THE PCR COURT ERRED IN DENYING THE PETITION WITHOUT HOLDING AN EVIDENTIARY HEARING ON [DEFENDANT]'S CLAIMS THAT TRIAL COUNSEL WAS INEFFECTIVE FOR MISADVISING HIM REGARDING THE DEPORTATION CONSEQUENCES OF HIS GUILTY PLEA[.]

Having conducted a de novo review, we affirm substantially for the reasons explained by Judge Sokalski. Defendant's argument lacks merit because his assertions are clearly contradicted by the record.

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Affirmed.

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