

# RECORD IMPOUNDED

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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-0867-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

NOEL MANGUAL, a/k/a  
CHATO RODRIGUEZ and  
CHATO MANGUAL,

Defendant-Appellant.

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Submitted December 21, 2022 – Decided March 20, 2023

Before Judges Mayer and Puglisi.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 15-01-0046.

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

Raymond S. Santiago, Monmouth County Prosecutor, attorney for respondent (Alecia Woodard, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Noel Mangual appeals the Law Division's September 15, 2021 denial of his first petition for post-conviction relief (PCR) without an evidentiary hearing. Having reviewed the facts in light of applicable law, we affirm.

On August 23, 2014, defendant saw nine-year-old K.D.<sup>1</sup> sitting on her mother's front porch in the apartment complex where defendant's girlfriend also lived. Defendant asked K.D. to go with him to throw out trash in the dumpster. Once there, defendant told K.D. he had to urinate, pulled down his pants and "[w]ith his genitals exposed . . . grabbed K.D. by the waist and groped her breast area despite her attempt to walk away."

A neighbor saw defendant and K.D. walking back from the dumpster area to the apartment. K.D. walked in front of defendant and refused to talk to him. Defendant wrapped his arm around K.D. and asked her not to tell anyone what happened. He then asked K.D. to go back to the dumpster area with him, but she ran upstairs and told her mother, who called the police. Defendant fled the scene but was later arrested.

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<sup>1</sup> We use initials to protect the victim's privacy. See R. 1:38-3(c)(12).

A Monmouth County grand jury indicted defendant for second-degree sexual assault, N.J.S.A. 2C:14-2(b) (count one); fourth-degree lewdness, N.J.S.A. 2C:14-4(b)(1) (count two); and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a) (count three).

During discovery, the State produced the neighbor's witness statements and defense counsel provided reciprocal discovery including defendant's cell phone records, photographs of the scene, and a list of six potential witnesses. Defense counsel also requested any transcripts of defendant's phone conversations that may have been intercepted while he was detained. The State provided notice it intended to introduce K.D.'s out-of-court statements made to police and another person pursuant to N.J.R.E. 803(c)(27), which was scheduled for a hearing to determine the admissibility of her statements.

On the date scheduled for the hearing, defendant instead entered into an agreement to plead guilty to second-degree sexual assault. The court engaged in a colloquy with defendant, who affirmed he was voluntarily pleading guilty because he was guilty and no one forced or threatened him to do so. Defendant acknowledged counsel had spoken with him about his case and explained the charges to him, and he understood the charges and the proceedings. He further affirmed counsel answered all his questions and he was satisfied with counsel's

representation of him. The court, finding the guilty plea to be knowing and voluntary, accepted the plea.

Three weeks later, defendant filed a grievance with the Office of Attorney Ethics (OAE) alleging gross neglect against his attorney. He obtained new counsel, who filed a motion to withdraw the guilty plea. Four months later, counsel advised the court that defendant was withdrawing the motion. Both the court and counsel questioned defendant on the record to confirm he wanted to withdraw the motion and be sentenced. Defendant stated he understood what he was doing and no one forced or threatened him to proceed with sentencing.

At sentencing, pursuant to the plea agreement, the State dismissed counts two and three, and recommended that defendant be sentenced as a third-degree offense on the second-degree sexual assault charge. The court sentenced defendant to three years with an eighty-five-percent parole ineligibility period pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2; Parole Supervision for Life, N.J.S.A. 2C:43-6.4; registration under Megan's Law, N.J.S.A. 2C:7-1 to -23; and a no contact order pursuant to Nicole's Law, N.J.S.A. 2C:14-12 and N.J.S.A. 2C:44-8.

We affirmed defendant's sentence. State v. Mangual, No. A-4326-15 (App. Div. Aug. 31, 2016).

Defendant then filed a pro se PCR petition and amended petition alleging ineffective assistance of counsel against both his previous attorneys. He claimed his first attorney was ineffective because he did not file a motion to dismiss the indictment or to suppress the victim's statements, failed to meet with him or explain the discovery, and defendant believed counsel's performance was unethical. Defendant also alleged he was pressured by his second attorney to plead guilty, which rendered the plea involuntary, and the State engaged in prosecutorial misconduct by withholding evidence. The court appointed PCR counsel who filed a brief in support of the petition.

After hearing oral argument, the PCR judge denied the petition in a written order and opinion. Noting defendant's claim of ineffective assistance of counsel was premised solely on his filing an ethics complaint, the judge found defendant provided "no proof that the complaint was ever acted upon by the Office of Attorney Ethics (OAE). When OAE determines there is no basis to file a grievance, it notifies the complainant. Moreover, the filing of a complaint without a shred of accompanying proof provides no support to these allegations." In rejecting defendant's claim that his first attorney was deficient in his investigation of the charges, the PCR judge noted counsel requested discovery from the State and provided reciprocal discovery.

The judge also found defendant's claim that his plea was involuntary was "totally contradicted by the record," noting the trial court "engaged in a lengthy colloquy to establish that defendant's plea was voluntary," during which defendant acknowledged he was pleading guilty because he was guilty; he was not forced or threatened to plead guilty; his counsel explained the charges to him and he understood them; counsel answered all of his questions; and he was satisfied with counsel's representation. The PCR judge also noted after defendant pleaded guilty, he was "assigned new counsel and given a chance to withdraw the plea," which he retracted. The PCR judge found that at sentencing, the trial court again "questioned defendant extensively on the record," and defendant acknowledged he knew what he was doing and no one had forced, threatened or coerced him to retract the motion to withdraw the guilty plea and proceed with sentencing.

Because the PCR judge determined defendant had not established a prima facie case of ineffective assistance of counsel, he found defendant was not entitled to an evidentiary hearing. See State v. Preciose, 129 N.J. 451, 462 (1992). This appeal followed.

Defendant presents the following issue for our consideration:

BY FAILING TO MEET WITH DEFENDANT TO  
DISCUSS THE CASE, COUNSEL DID NOT

CONDUCT AN INVESTIGATION, FILE RELEVANT PRE-TRIAL MOTIONS, AND DEFENDANT WAS COERCED INTO PLEADING GUILTY. THIS WAS ALL AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL AND REQUIRES AN EVIDENTIARY HEARING.

We review the legal conclusions of a PCR judge de novo. State v. Harris, 181 N.J. 391, 420-21 (2004) (citing Mickens-Thomas v. Vaughn, 355 F.3d 294, 303 (3d Cir. 2004)). Additionally, where no evidentiary hearing has been held, we "may exercise de novo review over the factual inferences drawn from the documentary record by the [PCR judge]." Id. at 421 (citing Zettlemyer v. Fulcomer, 923 F.2d 284, 291 n.5 (3d Cir. 1991)).

Applying that standard, we conclude the PCR judge correctly denied defendant's petition substantially for the reasons expressed in his thorough written decision. We find no merit to any of defendant's contentions to the contrary and conclude, as did the PCR judge, defendant failed to establish a prima facie claim of ineffective assistance of counsel to warrant an evidentiary hearing. Preciose, 129 N.J. at 462. We add only the following brief comments.

In his PCR petition and on appeal, defendant contends counsel was ineffective because he failed to file a motion to dismiss the indictment or a motion to suppress the victim's and witness's statements. However, defendant fails to explain how either motion would have had merit. "It is not ineffective

assistance of counsel for defense counsel not to file a meritless motion." State v. O'Neal, 190 N.J. 601, 619 (2007).

Defendant also failed to demonstrate any prejudice by establishing that, but for counsel's errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 667-68, 694 (1984). The presumptive sentence for a second-degree sexual assault is five to ten years. N.J.S.A. 2C:43-6(a)(2). As the trial court advised him, defendant was also subject to an extended term of imprisonment under N.J.S.A. 2C:44-3(a). Under the plea agreement, the State recommended a sentence in the third-degree range, which is three to five years, and the court sentenced defendant to the lowest term in that range. N.J.S.A. 2C:43-6(a)(3). Because defendant received the benefit of a favorable plea agreement, he cannot show rejecting the plea would have been a rational decision under the circumstances.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION