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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0875-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALEXANDRI GOMEZ,

Defendant-Appellant.

Submitted May 8, 2023 – Decided May 25, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment No. 15-08-0948.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Lauren Bonfiglio, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Alexandri Gomez appeals from the Law Division's September 10, 2021 order denying her petition for post-conviction relief ("PCR") without an evidentiary hearing. We affirm.

On August 12, 2015, a Mercer County grand jury returned Indictment Number 15-08-0948, charging defendant with first-degree conspiracy, contrary to N.J.S.A. 2C:5-2 (count one); first-degree felony murder, contrary to N.J.S.A. 2C:11-3(a)(3) and N.J.S.A. 2C:2-6 (count two); first-degree attempted robbery, contrary to N.J.S.A. 2C:15-1 and N.J.S.A. 2C:2-6 (count three); second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4(a) and N.J.S.A. 2C:2-6 (count four); second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4(a) and N.J.S.A. 2C:2-6 (count five); and second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5(b) and N.J.S.A. 2C:2-6.

On April 18, 2016, defendant pled guilty to an amended charge of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1). In accordance with the terms of defendant's negotiated plea, the judge sentenced defendant to fifteen years' imprisonment subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and five years of parole supervision to be served following her release.

On May 18, 2018, defendant filed the instant petition for PCR.¹ Among other things, defendant asserted that her attorney provided her with ineffective assistance of counsel because: (1) she failed to give defendant an opportunity to view DVD recordings of statements made by co-defendants prior to the entry of her guilty plea, which rendered her plea unintelligent; and (2) she failed to present mitigating factor four during sentencing.²

On April 22, 2021, a hearing was held before Judge Janetta D. Marbrey. Following oral argument, the judge denied defendant relief without an evidentiary hearing in a September 10, 2021 order, concluding that defendant did not satisfy the two-prong test of Strickland v. Washington, 466 U.S. 668, 687 (1984). In a written opinion affixed to the order, the judge provided her reasoning:

These contentions fail to overcome the formidable barrier before the [d]efendant[,] which includes a strong presumption of verity, substantial deference towards the trial counsel's strategic judgments, and a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. As [d]efendant admits, trial counsel is most familiar

¹ Defendant also moved to vacate her guilty plea pursuant to Rule 3:9-3(e), but that issue is not before us on appeal.

² Specifically, defendant argues that trial counsel should have presented evidence that defendant was coerced into the participation of the instant offense by a co-defendant who allegedly assaulted her with a handgun.

with the facts and circumstances surrounding a case and is best positioned to make strategic judgments in that trial. As a matter of law, [d]efendant's trial counsel was presumably within her discretion in deciding whether to give [d]efendant access to the DVD recordings. Nevertheless, [d]efendant makes no colorable assertion that trial counsel's decision falls outside the range of professionally competent assistance. Moreover, nothing in [d]efendant's argument suggests that the contents of the DVD recording would have had any significant effect on the outcome of the trial even if she was given access.

In a similar manner, [d]efendant fails to explain why trial counsel's decision to withhold presentation of mitigating factor four falls outside the range of professional competent assistance. Like with the aforementioned DVD recordings, the decision to present certain arguments lies squarely within trial counsel's discretion. Furthermore, the persuasive force of [d]efendant's claim is only blunted by the fact that trial counsel did present other mitigating factors for the court's consideration[,] including: [d]efendant's long history of drug abuse, the hardship of [d]efendant's incarceration on her family, and [d]efendant's cooperation with authorities. Accordingly, the court can only presume that trial counsel's decision in this respect was within the ra[n]ge of competent assistance.

Notably, when asked by the court if she was satisfied with the services provided by the attorney, that she had enough time to discuss the case with the attorney, and that she was provided with and reviewed all the State's discovery, [d]efendant responded "yes." [The plea judge] determined, based on [d]efendant's under-oath representations[,] that her plea was voluntary and not the result of any undisclosed threats or promises and that she was satisfied with her attorney's advice.

Additionally, even if counsel was deficient, [d]efendant does not present any supporting evidence that she was prejudiced by counsel's deficiency. In fact, [d]efendant does not present any facts that would overcome the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. Therefore, based on the record, [d]efendant['s] claim for ineffective assistance of counsel must be denied.

[(internal citations omitted).]

This appeal followed. On appeal, defendant raises the same arguments she unsuccessfully presented to the PCR judge:

MS. GOMEZ IS ENTITLED TO AN EVIDENTIARY HEARING ON HER CLAIM THAT HER ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO REVIEW DISCOVERY AND FAILING TO ADVOCATE ADEQUATELY AT SENTENCING.

A defendant's right to effective assistance of counsel extends to the plea-negotiation process. Lafler v. Cooper, 566 U.S. 156, 162 (2012); see also State v. Chau, 473 N.J. Super. 430, 445 (App. Div. 2022). To justify relief after a guilty plea, a defendant must satisfy a modified Strickland standard, which requires a showing 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-

Valdéz, 200 N.J. 129, 139 (2009) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)) (alteration in original); see Lafler, 566 U.S. at 163 (holding that a defendant claiming ineffective assistance at the plea stage must show that "the outcome of the plea process would have been different with competent advice").

When petitioning for PCR, the defendant must establish, by a preponderance of the credible evidence, that they are entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013); State v. Preciose, 129 N.J. 451, 459 (1992). To sustain that burden, the defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing and the defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance, material issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. Rule 3:22-10(b); State v. Porter, 216 N.J. 343, 355

(2013). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland, 466 U.S. at 687; State v. Fritz, 105 N.J. 42, 58 (1987). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

Having considered defendant's contentions in light of the record and the applicable law, we affirm the denial of defendant's PCR petition substantially for the reasons detailed at length in Judge Marbrey's opinion. We discern no abuse of discretion in the judge's consideration of the issues, or in her decision to deny the petition without an evidentiary hearing. We are satisfied that the trial attorney's performance was not deficient, and defendant has provided nothing more than bald assertions to the contrary.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION