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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0985-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

REINALDO RODRIGUEZ,

Defendant-Appellant.

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Submitted March 1, 2023 – Decided March 14, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 15-02-0127.

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

Esther Suarez, Hudson County Prosecutor, attorney for respondent (Patrick McAvaddy, Assistant Prosecutor, on the brief).

PER CURIAM

Petitioner Reinaldo Rodriguez appeals from the August 20, 2021 order

denying his petition for post-conviction relief (PCR). We affirm, substantially for the reasons set forth by Judge John A. Young in his comprehensive written opinion.

## I.

In 2014, petitioner was indicted on charges of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one) and two counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a (counts two and three). The indictment stemmed from an incident in 2014 when petitioner was babysitting his former girlfriend's two-year-old daughter and struck the toddler in the abdomen with such force that he lacerated her liver. The child died from her injuries.

In January 2016, petitioner appeared before Judge Young and pled guilty to count one, in exchange for the State's recommendation that he be sentenced to a thirty-year prison term with a thirty-year period of parole ineligibility and that the remaining counts be dismissed. Before accepting petitioner's plea, Judge Young asked him if he wanted to plead guilty "knowing . . . the sentence [he] face[d] . . . [was] . . . thirty years without parole." Petitioner answered affirmatively. Further, he testified he had sufficient time to discuss the plea agreement with counsel, he was not forced to accept the plea, but was doing so

freely and voluntarily, and was satisfied with plea counsel's representation.

Petitioner also acknowledged his attorney had "gone through all of the discovery, . . . met with" him, and "discussed the case." Moreover, petitioner stated the answers on his plea forms were truthful, that if he "had any questions when . . . going through the plea forms with [defense counsel]," his attorney answered them, and he was satisfied with counsel's answers.

Before petitioner provided a factual basis for his plea, Judge Young asked him if he understood that absent a plea agreement, he "face[d] up to life imprisonment" if convicted and would serve sixty-seven years without parole.

Petitioner testified he understood. Judge Young further stated,

because this is a plea to a first-degree murder, there is a mandatory minimum thirty-year sentence. However, under the No Early Release Act,<sup>1</sup> the provision of parole supervision upon your release still applies. So, after you're released, you will be under parole supervision for a period of five years. Do you understand that?

Petitioner answered, "[y]es."

Before Judge Young imposed sentence in March 2016, he asked petitioner under oath, "[d]o you stand by what you told me at the time you pled guilty?"

Petitioner responded, "[y]es." His attorney also stated at sentencing that

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<sup>1</sup> N.J.S.A. 2C:43-7.2.

petitioner understood if "the court accept[ed] the plea agreement," it had "no discretion at sentencing," and "ha[d] to impose a thirty-year sentence with thirty years no parole." Judge Young sentenced petitioner consistent with the plea agreement.

In August 2016, we heard petitioner's appeal on a sentencing calendar, pursuant to Rule 2:9-11, and affirmed his sentence, concluding it was "not manifestly excessive or unduly punitive and d[id] not constitute an abuse of discretion." State v. Rodriguez, No. A-3702-15 (App. Div. Aug. 2, 2016). Less than four years later, petitioner filed a timely pro se petition for PCR; assigned counsel supplemented the petition. In petitioner's application, he argued plea counsel was ineffective for failing to adequately communicate with him and for telling him he would receive a three-year, instead of a thirty-year, prison term if he was sentenced consistent with the plea agreement.

Judge Young heard argument on the petition in June 2021. On August 20, 2021, he issued an order, denying the PCR petition without an evidentiary hearing. In a written opinion accompanying the order, Judge Young summarized what occurred during petitioner's plea colloquy, recalling that before petitioner pled guilty, he testified "he was satisfied with the advice and representation that his trial counsel provided, that he himself made the decision to plead guilty, and

he had enough time to speak with . . . trial counsel about that decision."

Next, the judge found petitioner provided "no factual basis or any evidence whatsoever to support his claim that his trial counsel . . . advised him . . . he would receive three years['] incarceration for pleading guilty to the first-degree murder of a two-year-old child." Additionally, the judge concluded:

[t]he record is entirely devoid of any term of imprisonment other than the thirty-year plea deal to which petitioner ple[d], and the potential life in prison [sentence] he faced if he were to have gone to trial. Petitioner's claim regarding his trial counsel is nothing more than a bald assertion and wholly fails to establish a prima facie case in support of his petition for [PCR].

## II.

On appeal, petitioner argues as follows:

### POINT I

[PETITIONER] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY MISADVISING HIM ABOUT HIS SENTENCE AND FAILING TO COMMUNICATE ADEQUATELY.

### POINT II

THIS MATTER MUST BE REMANDED FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW ON [PETITIONER'S] CLAIM THAT COUNSEL RENDERED INEFFECTIVE ASSISTANCE FOR FAILING TO COMMUNICATE

## ADEQUATELY.

These arguments are unavailing.

We begin by outlining the principles that guide our review. "[W]here the [PCR] court does not hold an evidentiary hearing, we may exercise de novo review over the factual inferences the trial court has drawn from the documentary record." State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014) (citing State v. Harris, 181 N.J. 391, 420-21 (2004)). Additionally, we review a PCR court's legal conclusions de novo. State v. Nash, 212 N.J. 518, 540-41 (2013) (citing Harris, 181 N.J. at 415-16). Also, we review a trial court's decision to deny a petitioner's request for an evidentiary hearing under an abuse of discretion standard. State v. Russo, 333 N.J. Super. 119, 137 (App. Div. 2000) (citing State v. Artis, 36 N.J. 538, 541 (1962)).

A petitioner must establish entitlement 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)). Additionally, a petitioner is not automatically entitled to an evidentiary hearing by simply raising a PCR claim. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). In fact, an evidentiary hearing is required only when: a petitioner establishes a prima facie case in support of PCR; the court determines there are disputed issues of material fact that cannot

be resolved by review of the existing record; and the court finds an evidentiary hearing is required to resolve the asserted claims. State v. Porter, 216 N.J. 343, 354 (2013) (citing R. 3:22-10(b)).

To establish a claim of ineffective assistance of counsel (IAC), a petitioner must satisfy the two-part test under Strickland v. Washington, 466 U.S. 668, 687 (1984), and show: (1) "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment[.]" and (2) "the deficient performance prejudiced the defense." See also State v. Fritz, 105 N.J. 42, 57-58 (1987). A prima facie case of IAC must be demonstrated by legally competent evidence rather than "bald assertions." Cummings, 321 N.J. Super. at 170.

A petitioner satisfies the first Strickland prong by showing counsel's representation fell short of the prevailing norms of the legal community. Padilla v. Kentucky, 559 U.S. 356, 366-67 (2010). The second component of Strickland is met by establishing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

A strong presumption exists that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. Id. at 689. And because prejudice is not presumed, a petitioner "must demonstrate 'how specific errors of counsel undermined the reliability' of the proceeding." State v. Drisco, 355 N.J. Super. 283, 289-90 (App. Div. 2002) (citations omitted).

Applying these standards, and for the reasons expressed in Judge Young's thoughtful opinion, we are convinced petitioner failed to demonstrate a reasonable likelihood that his PCR claim would ultimately succeed on the merits and failed to satisfy either prong of the Strickland test. Lastly, because there was no prima facie showing of IAC, Judge Young correctly found petitioner was not entitled to an evidentiary hearing.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION