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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-1003-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VIRGIL D. BALDWIN,

Defendant-Appellant.

Submitted January 24, 2023 – Decided February 3, 2023

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 09-02-0398.

Joseph E. Krakora, Public Defender, attorney for appellant (Steven M. Gilson, Designated Counsel, on the brief).

Raymond S. Santiago, Acting Monmouth County Prosecutor, attorney for respondent (Lisa Sarnoff Gochman, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Virgil D. Baldwin appeals from an August 24, 2021 order denying his second petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant raises a single argument for our consideration:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE THE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF FIRST PCR COUNSEL'S INEFFECTIVENESS FOR FAILING TO SUBMIT DOCUMENTATION THAT DEFENDANT WAS INCOMPETENT TO ENTER INTO A GUILTY PLEA ON THE PLEA CUTOFF DATE.

We reject these contentions and affirm.

The facts underlying defendant's second-degree robbery conviction were set forth at length in our prior opinion, State v. Baldwin, No. A-0562-13 (App. Div. Dec. 16, 2015) (slip op. at 4-9), and accurately summarized in the PCR judge's decision. In essence, a jury convicted defendant and his co-defendant, Robert L. King, of stealing the victim's purse after yanking her from her car during the evening of November 29, 2008. Id. at 4-5. Within minutes of the robbery, both defendants were stopped in a car matching the description given by a witness. Id. at 6. A check bearing the name of the victim was found inside the car; the victim's license and other identification cards were seized from defendant's sock. Id. at 6-7. Notably, defendant testified on his own behalf at trial. Id. at 8.

After granting the State's motion to sentence defendant to a mandatory extended term of imprisonment as a repeat offender, N.J.S.A. 2C:44-7.1, the trial judge imposed an aggregate prison term of twenty years, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. On direct appeal, we affirmed defendant's conviction and sentence.¹ Id. at 4, 28.

Relevant here, the trial was delayed until April 2013, while defendant underwent a series of competency evaluations. Although a forensic psychiatrist initially opined defendant was not competent to stand trial, upon further observation, the same doctor concluded defendant was malingering. Following a competency hearing, the trial court requested another psychiatric evaluation. Thereafter, a different psychiatrist concluded defendant was competent to stand trial notwithstanding his schizoaffective disorder diagnosis. At trial counsel's behest, defendant was evaluated yet again. In the meantime, defendant moved pro se to relieve his attorney. Defendant thereafter was found competent to stand trial and another attorney was assigned to represent him.

During the December 12, 2012 plea cutoff hearing, the State agreed to limit defendant's sentencing exposure to a fourteen-year prison term subject to

¹ We also affirmed King's conviction in our opinion consolidating the appeals of both defendants. Baldwin, slip op. at 4, 28.

NERA in exchange for his guilty plea. Further, the trial court indicated it would consider imposing a ten-year prison term if defendant's "medical information concerning his past medical history and any other information" warranted mitigation. Defendant declined the opportunity to confer with his attorney about the plea offer. Trial counsel said defendant did not recall the incident and, as such, he could not enter a guilty plea.

After he was sentenced, defendant timely filed a pro se petition for PCR raising six grounds for relief. Pertinent to this appeal, defendant claimed he "was under the influence of several psychotropic drugs" during the plea cutoff hearing, "which made him incapable to make an informed decision" about the State's offer. Defendant's assigned PCR counsel filed a supporting brief, expounding upon that ground for relief.² Following argument, on January 3, 2018, the first PCR judge, who was not the trial judge, denied defendant's petition.

Defendant filed a second PCR petition on December 26, 2018, while his appeal from the January 3, 2018 order was pending. Accordingly, the Criminal Division presiding judge dismissed the petition without prejudice.

² Defendant's appendix on appeal includes his pro se petition, but not his first PCR counsel's supporting brief.

We thereafter affirmed the denial of defendant's first petition substantially for the reasons stated by the PCR judge. State v. Baldwin, No. A-3934-17 (App. Div. June 28, 2019) (slip op. at 4). We noted defendant's assertion that "he stopped taking his medication while incarcerated at the county jail," was unsubstantiated and "inconsistent with defendant's pro se claim that he was heavily medicated at the time." We therefore concluded defendant failed to make a prima facie showing that trial counsel was ineffective under the Strickland/Fritz³ standard by not seeking an adjournment of the plea cutoff hearing.

On February 7, 2020, defendant refiled his second pro se petition and was assigned counsel. Defendant thereafter filed an amended petition, and assigned counsel filed a supporting brief.⁴ Defendant asserted his two trial attorneys, appellate lawyer, and first PCR attorney provided ineffective assistance. To support his claim that his first PCR counsel failed to recognize he was on suicide

³ Strickland v. Washington, 466 U.S. 668, 687 (1984) (recognizing the defendant must demonstrate: (1) the deficiency of his counsel's performance; and (2) prejudice to his defense); State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-pronged analysis in New Jersey).

⁴ Defendant's appellate appendix includes his second petition and amended petition, but not his second PCR counsel's brief.

watch and heavily medicated before the December 12, 2012 plea cutoff hearing, defendant provided the reports of two social workers, which included the workers' progress notes and medications that were administered to defendant in jail.⁵

After hearing argument, the second PCR judge reserved decision. On August 24, 2021, the judge issued an order denying PCR. In a cogent written opinion accompanying the order, the judge determined defendant's claims against his trial and appellate attorneys were procedurally barred under Rule 3:22-4(b), and substantively lacked merit. Defendant does not challenge these determinations.

Regarding the sole issue reprised on appeal, the judge found defendant's claims of ineffective assistance by his first PCR counsel were not procedurally barred under Rule 3:22-4(b), but defendant nonetheless failed to present a prima facie claim. Citing the social workers' reports, the judge found the "documents do not address defendant's competency to stand trial and certainly do not establish his incompetency as he claims."

⁵ According to the State's argument during the second PCR hearing, defendant apparently included certifications of both social workers stating "they know nothing other than what is in these documents." The certifications were not provided on appeal.

For example, one social worker's report "document[ed] the medications prescribed to defendant on certain dates from July 29, 2012 to January 1, 2013." The judge further recognized the trial court found defendant was malingering; the first PCR judge rejected defendant's argument that he "was forced into a trial because of [his first attorney]'s deficient performance"; and this court affirmed the first PCR judge's decision without extensive discussion, R. 2:11-3(e)(2).

On appeal, defendant maintains his first PCR counsel failed to submit the social workers' reports, which "evidenced a heavily-medicated and suicidal mentally-disoriented defendant, prior to and subsequent to the plea cutoff date," and "supported defendant's incompetence to enter a guilty plea." Having considered defendant's contentions in view of the applicable law, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by the second PCR judge in his cogent decision. We add only the following brief remarks.

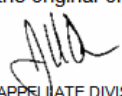
In New Jersey, the right to the effective assistance of counsel extends to PCR counsel. See State v. Rue, 175 N.J. 1, 18-19 (2002). PCR counsel "should advance all of the legitimate arguments requested by the defendant that the record will support." R. 3:22-6(d). Thus, "PCR counsel must communicate with the client, investigate the claims urged by the client, and determine whether

there are additional claims that should be brought forward." State v. Webster, 187 N.J. 254, 257 (2006) (citing Rue, 175 N.J. at 18-19). However, PCR counsel is not required to bolster claims raised by a defendant that are without foundation. Ibid.

In the present matter, the social workers' reports failed to bolster defendant's claims. Indeed, nothing in the reports demonstrated defendant was incompetent to stand trial or otherwise refuted the trial court's decision that defendant was malingering. Accordingly, we conclude defendant failed to assert a cognizable claim of inadequate performance by his first PCR counsel. We therefore discern no reason to disturb the order under review.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION