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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1536-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAQUAN DALLAS,

Defendant-Appellant.

Submitted March 6, 2023 – Decided April 4, 2023

Before Judges Whipple, Smith, and Marczyk.

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 (Karen A. Lodeserto, 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 Jaquan Dallas appeals from the October 18, 2021 denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. Having considered defendant's arguments, we affirm.

On the morning of November 14, 2014, at 1:45 a.m., police officers were summoned to an address in Trenton to respond to a shooting. The victim, Rodney Burke, had been shot in his lower back and left thigh. He was taken to the hospital, but died that morning.

The subsequent investigation involved multiple witnesses, who told the police defendant, along with three others, had planned to rob a man named Ronald Harris, who lived with Burke. The witnesses reported seeing a white SUV circle the area and flee the scene shortly after they heard the gunshots. Cell phone records obtained by the police corroborated this information.

Defendant admitted to the investigating officers an accomplice picked him up in a white SUV the night of the attack and drove him to the site of the shooting. A video camera recorded a white SUV "circling" the area. The police also obtained other video evidence from a nearby liquor store depicting defendant and the other conspirators.

Defendant was charged with first-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1(a); first-degree felony murder, N.J.S.A.

2C:11-3(a)(3); first-degree attempted robbery, N.J.S.A. 2C:15-1; two counts of second-degree possession of a weapon with an unlawful purpose, N.J.S.A. 2C:39-4(a); and one count of second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b).

Through appointed counsel, defendant negotiated a deal in which he pleaded guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1). During his plea hearing, defendant stated he was satisfied with his attorney and had no further questions. He provided a factual basis for the plea. The prosecutor recommended a sentence in accordance with the deal: twenty-five years subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

At sentencing, the judge found aggravating factors three, the risk that the defendant will commit another offense, and nine, the need for deterring the defendant and others from violating the law. N.J.S.A. 2C:44-1(a)(3), (9). The court applied no mitigating factors. The judge followed the terms of the plea deal and sentenced defendant to twenty-five years of incarceration. Defendant was twenty-one years old at the time of sentencing.¹

¹ Defendant directly appealed his sentence, and we remanded for a more detailed explanation of reasons. State v. Dallas, No. A-3573-16 (App. Div. Sept. 25, 2017) (slip op. at 1). The re-sentencing court held a hearing and imposed the same sentence.

In October 2020, our State Legislature passed an amendment to N.J.S.A. 2C:44-1(b) which added an additional mitigating factor fourteen: "The defendant was under [twenty-six] years of age at the time of the commission of the offense." Following this change in the law, defendant filed a pro se petition for PCR on January 19, 2021. Therein, he alleged his trial counsel was ineffective because his attorney failed to present various mitigating factors—including age—at sentencing.² He was assigned PCR counsel, and oral arguments were heard on July 30, 2021. Defendant's petition was denied without an evidentiary hearing. This appeal followed.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). PCR provides a "built-in 'safeguard that ensures that a defendant was not unjustly convicted.'" State v. Nash, 212 N.J. 518, 540 (2013) (quoting State v. McQuaid, 147 N.J. 464, 482 (1997)). Our

² Specifically, defendant claims counsel neglected to argue for the application of mitigating factors seven, "[t]he defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense"; eight, "[t]he defendant's conduct was the result of circumstances unlikely to recur"; nine, "[t]he character and attitude of the defendant indicate that the defendant is unlikely to commit another offense"; and thirteen, "[t]he conduct of a youthful defendant was substantially influenced by another person more mature than the defendant." N.J.S.A. 2C:44-1(b)(7), (8), (9), (13).

review is deferential to a PCR court's factual findings supported by sufficient credible evidence. State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Nash, 212 N.J. at 540). Review of a PCR court's interpretation of law is de novo. Nash, 212 N.J. at 540-41.

When a PCR claim concerns issues of fact not on the record, the court should grant an evidentiary hearing if, in the light most favorable to the defendant, said facts would warrant relief. State v. Marshall, 148 N.J. 89, 158 (1997). An evidentiary hearing on ineffective assistance should be granted when a defendant has alleged a prima facie claim that would satisfy the Strickland³ standard. Preciose, 129 N.J. at 462.

If a prima facie case is made, a hearing must be held; the court should not presume the outcome of the hearing. State v. Russo, 333 N.J. Super. 119, 140 (App. Div. 2000). On appeal, the court analyzes a PCR judge's decision to deny a hearing on an abuse of discretion standard. State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013).

Defendant first submits his prior counsel was deficient because she did not discuss trial strategy with him and failed to provide him with copies of the State's video evidence. Specifically, he asserts counsel's alleged failure to

³ Strickland v. Washington, 466 U.S. 668, 694 (1984).

communicate with him regarding these issues amounts to a prima facie case of ineffective assistance of counsel under the standard delineated in Strickland, 466 U.S. at 694.

A defendant seeking PCR must establish a prima facie claim by a preponderance of the credible evidence. Nash, 212 N.J. at 541 (quoting Preciose, 129 N.J. at 459). This requires a defendant allege specific, articulatable facts to provide an adequate basis on which a court may analyze the case. State v. Pennington, 418 N.J. Super. 548, 553 (App. Div. 2011). A 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).

Here, defendant has made no precise certification he was unable to meet or discuss evidentiary issues with counsel. Instead, most of defendant's pro se motion concerned counsel's alleged failure to present mitigating factors. Nevertheless, on appeal, he contends "prior counsel failed to communicate [T]hey did not discuss trial strategy or discovery and [defendant] asserted he was missing DVDs which may have depicted him as the assailant." The only certified support for this statement in defendant's original pro se filing is a point heading, which states: "Counsel's failure to consult with petitioner in a

meaningful manner and prepare defense strategy constitutes ineffective assistance of counsel." Thus, we reject this argument.

Defendant next argues the amendment to N.J.S.A. 2C:44-1(b) adding youth as a mitigating factor, which the Legislature enacted four years after he was sentenced, should apply to him retroactively. This argument is foreclosed by State v. Lane, 251 N.J. 84 (2022), which held that N.J.S.A. 2C:44-1(b)(14) applies only prospectively. "[N]othing in N.J.S.A. 2C:44-1(b)(14)'s statutory text warrants a determination that the presumption of prospective application is overcome." Id. at 97.

Finally, defendant argues regardless of the retroactive application of mitigating factor fourteen, his trial counsel was ineffective at sentencing because she failed to raise his youth or ask the court to take into consideration other mitigating factors.⁴

There is a strong presumption counsel's performance fell within a range of reasonable representation. Pierre, 223 N.J. at 578-79. If a decision was

⁴ Defendant also argues the court should have found various non-statutory mitigating factors sua sponte. However, that is an issue for direct appeal, not PCR. State v. Acevedo, 205 N.J. 40, 46 (2011) (quoting State v. Clark, 65 N.J. 426, 436-37 (1974)) ("[M]ere excessiveness of sentence otherwise within authorized limits, as distinct from illegality by reason of being beyond or not in accordance with legal authorization, is not an appropriate ground of post-conviction relief and can only be raised on direct appeal from the conviction.").

reasonable at the time it was made, it should be upheld, even if in hindsight another decision would have been advantageous. See Nash, 212 N.J. at 543.

The record directly contradicts defendant's assertions. Defense counsel explicitly asked for the court to consider defendant's youth:

My client is [twenty-one] years old. He was [twenty]⁵ when this crime occurred I'm faced with the task of explaining to someone who's younger than the number [of] years that[] he's being asked to accept as his punishment. . . .

While not technically a mitigating factor, it certainly is something that should be noted.

She also explicitly advocated for mitigating factors eleven, imprisonment would entail excessive hardship to the defendant's dependents, and seven, the defendant led a law-abiding life for a substantial period of time. N.J.S.A. 2C:44-1(b)(7), (11). Then, she again argued for mitigation due to age and other factors during defendant's resentencing. Defendant's argument is nonsensical.

Finally, defendant asserts counsel provided ineffective assistance because she did not also advocate for mitigating factors four, substantial grounds tending to excuse the defendant's conduct, and eight, the defendant's conduct was the result of circumstances unlikely to recur. N.J.S.A. 2C:44-1(b)(4), (8). There


⁵ Defendant was actually nineteen at the time of the offense.

are valid reasons why counsel would deem it wise not to pursue these arguments; most obviously defendant's extensive juvenile record. Her performance was not deficient. See Nash, 212 N.J. at 543.

To the extent we have not addressed defendant's other arguments, we are satisfied they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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


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