SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1545-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHRISTIAN MOJICA,

Defendant-Appellant.

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Submitted March 13, 2023 — Decided March 20, 2023

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Accusation No. 18-05-0446.

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

Robert J. Carroll, Morris County Prosecutor, attorney for respondent (Tiffany M. Russo, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Christian Mojica appeals from an August 24, 2021 order denying his petition for post-conviction relief (PCR). We affirm.

Defendant was charged in a five-count complaint warrant with drug and weapons offenses. In 2018, he entered a negotiated plea agreement and pled guilty to first-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) and N.J.S.A. 2C:39-5(j) (count one), and second-degree possession of a controlled dangerous substance with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(10)(b) (count two). The remaining charges were dismissed, including a: disorderly persons offense for possession of drug paraphernalia with intent to use same, N.J.S.A. 2C:36-2; second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1); and fourth-degree possession of marijuana in a quantity more than fifty grams, N.J.S.A. 2C:35-10(a)(3).

The judge who took the plea carefully questioned defendant to ensure he understood his rights and the consequences of the guilty plea. Defendant testified he reviewed the plea forms with his attorney, initialed and signed the forms, and confirmed the answers on the forms were truthful and accurate. He also testified he had sufficient time to speak with his attorney and understood the charges, discovery, consequences of conviction following trial, including consequences of a guilty plea. He told the court he understood his prison

exposure could be thirty years. Defendant also testified his attorney answered all his questions, he was satisfied with his attorney's services, and had no questions for counsel or the court.

Defendant testified he committed the offenses for which he was offering his plea. He admitted he allowed his co-defendant, Naeem White, to use his apartment and knew White kept "at least or around five pounds of marijuana" in the apartment. Later in his testimony, defense counsel asked: "[T]he five pounds of marijuana that were inside of your apartment; was it your intention to sell portions of that marijuana to some of your friends?" Defendant responded "Yes." He also admitted he had sold portions of the marijuana to his friends.

Defendant also admitted he knew White was selling guns, some of which were kept in defendant's residence along with ammunition clips and bullets. He testified he allowed White to keep the drugs and the weapon in the apartment. Defendant also admitted White asked him to retrieve a bag from the apartment containing a weapon he knew White intended to sell. Defendant confirmed he did not have a permit for the weapon and had a previous conviction for robbery.

The judge gave defendant the option to think about his guilty pleas or to request the court accept his pleas. He requested the latter. The judge accepted defendant's pleas and his testimony, noting he "maintained good eye contact

with both the [c]ourt and his own attorney as he was being questioned and he was alert as he was answering questions not only from his own counsel but also from [the prosecutor] and the [c]ourt."

Pursuant to the plea agreement, the court imposed a six-year prison term on count two, and a concurrent ten-year term with a forty-two-month period of parole ineligibility pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2, on count one. The judge noted the six-year sentence was "the very lowest" she could impose.

Defendant did not file a direct appeal. In 2020, he filed a PCR petition arguing defense counsel was ineffective. He certified defense counsel never discussed with him how long it would take to present the case to a jury, the discovery, or trial strategy. He alleged counsel never discussed with him how the evidence would be used against him, the mental state required to sustain the charges, the possibility of filing a severance motion, and limitations on the State's ability to present statements from a confidential informant. Defendant asserted he wanted to go to trial because he did not know there was a gun in the bag White asked him to retrieve. He claimed his attorney dissuaded him from trying the case because it would take too long to get a trial and by that time

defendant "would have already [served] the full amount of the sentence that was being offered . . . [in] the plea agreement."

Defendant certified he accepted the plea because he had no other choice. He requested the court grant an evidentiary hearing.

Judge Michael E. Hubner adjudicated the petition in a written opinion. He concluded defendant's allegations defense counsel failed to review discovery or trial strategy were bald assertions because they were contradicted by defendant's testimony during the plea proceeding. He stated: "To accept [defendant's] assertions as true would mean . . . [he] lied to the trial court repeatedly." The judge also found defendant failed to show counsel's conduct prejudiced the outcome of the case and that defendant wanted to go to trial because "the evidence include[d] the fact that the gun was in his house, he carried it out of his house, the ammunition was in his house, and the $12,000 was in his house." A trial would have exposed defendant to "the potential of more prison time and the possibility of consecutive sentences."

Defendant raises the following points on appeal:

> POINT I – THE FACTUAL BASIS FOR COUNT TWO OF ACCUSATION 18-05-00446-A WAS INADEQUATE BECAUSE DEFENDANT STATED THE AMOUNT OF MARIJUANA HE POSSESSED WAS "AT LEAST OR AROUND" FIVE POUNDS[,] WHICH CONCEIVABLY MEANS THAT HE

POSSESSED LESS THAN THE STATUTORY AMOUNT REQUIRED TO ESTABLISH GUILT TO N.J.S.A. 2C:35-5[(B)](10)(B). THUS, DEFENDANT'S GUILTY PLEAS MUST BE VACATED. (NOT RAISED BELOW).

POINT II – DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL THAT IS CONSTITUTIONALLY GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, PARAGRAPH [TEN] OF THE NEW JERSEY CONSTITUTION.

A. TRIAL DEFENSE COUNSEL WAS INEFFECTIVE BY FAILING TO REVIEW DISCOVERY WITH DEFENDANT AND BY FAILING TO PREPARE FOR TRIAL.

B. TRIAL DEFENSE COUNSEL WAS INEFFECTIVE BY IMPROPERLY PRESSURING DEFENDANT INTO PLEADING GUILTY.

On a claim of ineffective assistance of counsel, a defendant must establish "counsel's representation fell below an objective standard of reasonableness" and, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting Strickland). Where the PCR involves a plea bargain, "a defendant must prove 'that there is a reasonable probability that, but for counsel's

errors, [they] would not have pled guilty and would have insisted on going to trial.'" State v. Gaitan, 209 N.J. 339, 351 (2012) (quoting State v. Nunez-Valdez, 200 N.J. 129, 139 (2009)).

To establish a prima facie case of ineffective assistance of counsel, a defendant must present legally competent evidence rather than "bald assertions." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). The petition must allege specific facts, in the form of admissible evidence, sufficient to support a prima facie claim. Ibid. A defendant must show the relevant facts through "affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Ibid.; see also R. 3:22-10(c).

"[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). We review a PCR court's legal conclusions de novo. State v. Harris, 181 N.J. 391, 416 (2004), cert. denied, 545 U.S. 1145 (2005).

Pursuant to these principles, we reject the arguments raised in Point II of defendant's brief and affirm for the reasons expressed in Judge Hubner's opinion. Defendant did not make a prima facie case of ineffective assistance of counsel.

The record neither supports defendant's claims regarding counsel's performance nor that defendant would have declined the plea agreement in favor of a trial.

The argument raised in Point I regarding the sufficiency of the factual basis for the plea was not raised in the PCR petition. Regardless, the adequacy of the factual basis of a plea may be raised on PCR. State v. Urbina, 221 N.J. 509, 527 (2015). Moreover, we may consider such a claim because we are in the "same position as the trial court in assessing whether the factual admissions during a plea colloquy satisfy the essential elements of an offense." State v. Tate, 220 N.J. 393, 404 (2015).

"Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.)," the possession of marijuana with the intent to distribute "in a quantity of five pounds or more but less than [twenty-five] pounds" is prohibited. N.J.S.A. 2C:35-5(a) and (b)(10)(b). Our review of defendant's plea testimony does not convince us he possessed less than five pounds of marijuana. Indeed, later in the plea colloquy he admitted possessing five pounds of marijuana, some of which he had already sold to friends, and that he intended to sell more of it. Defendant's testimony established the statutory elements for the drug offense.

Affirmed.