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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-1589-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RALPH LEBRON,

Defendant-Appellant.

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Argued February 14, 2023 – Decided April 20, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 17-07-0482.

Frank J. Pugliese, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Frank J. Pugliese, on the brief).

Andrew F. Guarini, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Andrew F. Guarini, on the brief).

PER CURIAM

Defendant Ralph Lebron appeals from an order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Perceiving no abuse of discretion in Judge John A. Young's decision not to conduct an evidentiary hearing and agreeing with his finding that defendant did not establish a prima facie case of ineffective assistance of counsel, we affirm.

In May 2017, defendant brutally assaulted his then-girlfriend by repeatedly punching and kicking her. Defendant was indicted for first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1), and second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1).

On December 18, 2017, defendant pled guilty to second-degree aggravated assault. In pleading guilty, defendant admitted that he had kicked and punched his former girlfriend causing her severe injuries, including fracturing some of her bones. Under the plea agreement, the State agreed to recommend a sentence of nine years in prison subject to periods of parole ineligibility and parole supervision as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

Before sentencing, a presentence report (PSR) was prepared. Defense counsel also submitted a sentencing memorandum, which detailed defendant's history of mental health conditions. Defense counsel argued those conditions

supported mitigating factor four and the imposition of a sentence less than the sentence recommended by the State.

At sentencing, defense counsel pointed out that the PSR did not discuss defendant's history of mental health conditions and substance abuse. It was also noted that the PSR did not include a psychological evaluation of defendant. Judge Young noted that those sections of the PSR were based on what defendant had reported. Nevertheless, the judge considered the information defense counsel had provided concerning defendant's mental health conditions. In that regard, defense counsel informed the judge that defendant had been diagnosed with schizophrenia and bipolar disorder. Defendant also detailed his history of substance abuse. Judge Young then directed that the PSR be amended and updated with the information concerning defendant's history of mental health conditions and substance abuse.

In determining the sentence, Judge Young found aggravating factors three, six, and nine. N.J.S.A. 2C:44-1(a)(3), (6), and (9). He also found mitigating factor four, N.J.S.A. 2C:44-1(b)(4), but gave it slight weight. The judge then sentenced defendant to nine years in prison subject to NERA, which was the sentence recommended in the plea agreement.

Defendant filed a direct appeal of his sentence as excessive, which we heard on an excessive sentencing calendar pursuant to Rule 2:9-11, and affirmed. State v. Lebron, No. A-3925-17 (App. Div. Mar. 14, 2019).

In October 2020, defendant filed a petition for PCR, and he was assigned PCR counsel. On May 26, 2021, Judge Young heard argument on the PCR petition. Approximately four months later, on September 30, 2021, Judge Young issued an order and written opinion denying defendant's PCR petition and request for an evidentiary hearing.

On this appeal, defendant raises six arguments for our consideration. He articulates those arguments as follows:

POINT I – DEFENDANT PRESENTED A PRIMA FACIE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL. DEFENDANT'S CLAIM IS SUPPORTED BY MATERIAL ISSUES OF DISPUTED FACTS LYING OUTSIDE THE RECORD. THE RESOLUTION OF THE DISPUTED FACTS NECESSITATED AN EVIDENTIARY HEARING. THE PCR COURT ERRED IN FAILING TO CONDUCT SUCH A HEARING.

POINT II – ALTERNATIVELY, THE SENTENCING COURT'S FAILURE IN THIS CASE TO ADHERE TO THE DICTATES OF N.J.S.A. 2C:44-6A AND B(2) AND COURT RULE 3:21-2 RENDERED DEFENDANT'S SENTENCE ILLEGAL. AS SUCH, DEFENDANT'S SENTENCE MUST BE VACATED AND THE MATTER REMANDED FOR RESENTENCING FOLLOWING THE

COMPLETION OF AN AMENDED [PSR] AND THE COURT'S CONSIDERATION OF THE STATUTORILY REQUIRED PSYCHOLOGICAL EVALUATION.

POINT III – THE ISSUE CONCERNING THE INEFFECTIVENESS OF COUNSEL COULD NOT HAVE BEEN RAISED ON DIRECT APPEAL. ADDITIONALLY, BECAUSE AN ILLEGAL SENTENCE CAN BE CHALLENGED AT ANY TIME PRIOR TO ITS COMPLETION, THE ISSUE OF AN ILLEGAL SENTENCE CAN BE RAISED FOR THE FIRST TIME HERE.

POINT IV – APPLYING THE PROCEDURAL BAR CONTAINED IN R[ULE] 3:22-4(B) AND (C) WOULD RESULT IN A FUNDAMENTAL INJUSTICE AND WOULD BE CONTRARY TO THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF NEW JERSEY.

POINT V – THE PCR COURT ERRED IN DENYING AN EVIDENTIARY HEARING AND [PCR] BECAUSE DEFENDANT'S PLEA COUNSEL FAILED TO PROPERLY ADVISE DEFENDANT OF THE TRUE CONSEQUENCES OF HIS PLEA.

POINT VI – DEFENDANT INCORPORATES BY REFERENCE THE ARGUMENTS CONTAINED IN HIS INITIAL VERIFIED PETITION, ANY PRO SE SUPPLEMENTAL BRIEF AND ANY ISSUES NOT HERETOFORE ADDRESSED IN PCR COUNSEL'S BRIEF.

When no evidentiary hearing is conducted by the PCR court, appellate courts review the denial of a PCR petition de novo. State v. Harris, 181 N.J.

391, 419-21 (2004); State v. Aburoumi, 464 N.J. Super. 326, 338-39 (App. Div. 2020). A PCR court's decision to proceed without an evidentiary hearing is reviewed for an abuse of discretion. State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013).

Having conducted a de novo review, we affirm the order denying defendant's PCR petition substantially for the reasons set forth in Judge Young's well-reasoned written opinion. Judge Young presided over defendant's guilty plea, imposed sentence, and appropriately considered defendant's arguments in support of his PCR petition. We agree with Judge Young that defendant did not establish that his defense counsel's performance was deficient or that his defense was prejudiced. See Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 57-58 (1987). We also discern no abuse of discretion in Judge Young's decision not to grant an evidentiary hearing because defendant failed to establish a prima facie case in support of PCR and there were no material issues of disputed fact concerning defendant's PCR petition. See State v. Porter, 216 N.J. 343, 355 (2013); R. 3:22-10(b).

We add some comments concerning defendant's contention that his sentence was illegal because the court did not adjourn his sentencing so that the

PSR could be updated, and a psychological evaluation could be performed. We reject that argument.

A court must order a presentence investigation of a defendant before imposing sentence and must accord it due consideration. See N.J.S.A. 2C:44-6(a); R. 3:21-2(a). N.J.S.A. 2C:44-6(b) requires the PSR to include material that may have a bearing on the sentence. That subsection also states:

The [PSR] shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first[-] or second[-]degree crime involving violence and:

. . . .

(2) the defendant has a prior conviction for . . . kidnapping pursuant to N.J.S.2C:13-1 . . . or

(3) the defendant has a prior diagnosis of psychosis.

The court, in its discretion and considering all the appropriate circumstances, may waive the medical history and psychological examination in any case in which a term of imprisonment including a period of parole ineligibility is imposed.

[N.J.S.A. 2C:44-6(b).]

"[A]n illegal sentence is one that 'exceeds the maximum penalty provided in the Code for a particular offense' or a sentence 'not imposed in accordance with law.'" State v. Acevedo, 205 N.J. 40, 45 (2011) (quoting State v. Murray,

162 N.J. 240, 247 (2000)). An illegal sentence can be corrected at any time. Id. at 47 n.4. However, "mere 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 [PCR] and can only be raised on direct appeal from the conviction." State v. Clark, 65 N.J. 426, 437 (1974).

Defendant argues that the PSR did not include information on his mental health conditions and that he had not a psychological evaluation. Before sentencing defendant, however, Judge Young was provided information concerning defendant's mental health conditions and he appropriately considered those issues. Indeed, Judge Young found mitigating factor four, but gave it only slight weight.

In addition, Judge Young effectively waived the need for a psychological evaluation. He accepted the representations as to defendant's diagnoses. Moreover, defendant did not submit a psychological evaluation in support of his PCR petition. Therefore, he made no showing that a psychological evaluation would have provided any material information affecting his sentence. Instead, defendant is asking us to speculate that a psychological evaluation would disclose something that Judge Young was not aware of when the judge sentenced



defendant in March 2018. There is no factual basis for that speculation. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) (explaining that a PCR petition must be supported by legally competent evidence and not mere bald assertions).

In short, defendant has not identified anything illegal concerning his sentence. Instead, his real argument is that his sentence was excessive. We denied that argument on his direct appeal.

We are constrained to remand this matter for two limited purposes. First, we direct that the judgment of conviction (JOC) be corrected to reflect that Judge Young found mitigating factor four. The transcript of the sentencing establishes that Judge Young found mitigating factor four, albeit he gave it slight weight. The JOC should be corrected to reflect that finding. See State v. Abril, 444 N.J. Super. 553, 564-65 (App. Div. 2016) (explaining that when there is a discrepancy between the sentencing transcript and JOC, the transcript controls).

Second, Judge Young directed that the PSR be updated to summarize defendant's mental health conditions and substance abuse. Defendant's PCR counsel represented that he looked for, but could not find, an updated PSR. Accordingly, we direct that the PSR be updated.

Affirmed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION