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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1873-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

YOSEOP CHOI,

Defendant-Appellant.

Submitted March 22, 2023 – Decided June 13, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 16-03-0284.

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

Mark Musella, Bergen County Prosecutor, attorney for respondent (K. Charles Deutsch, Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Yoseop Choi appeals from a June 18, 2020 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

In March 2016, defendant was charged in a Bergen County indictment with five offenses stemming from his infliction of fatal head trauma to his five-month-old son, L.C.¹: first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one); second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(2) (count two); second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count three); second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(2) (count four); and third-degree hindering apprehension or prosecution, N.J.S.A. 2C:29-3(b)(4) (count five).

L.C. was born in February 2015. On July 28, 2015, defendant was caring for L.C., who was crying and not eating. Defendant violently shook L.C. and punched the baby in the stomach. L.C. became unresponsive and pale. Defendant took L.C. to the hospital where his wife worked as a nurse. The doctors diagnosed L.C. with multiple concussions, abusive head trauma, bilateral retinal hemorrhaging, detached retinas, and fractured ribs. The

¹ We use initials to protect the privacy of the infant victim.

following day, detectives from the Bergen County Prosecutor's Office interviewed defendant. Defendant was read his Miranda² rights and signed a Miranda waiver form. He admitted to detectives to violently shaking and punching L.C., which he demonstrated on a doll. L.C. died ten days later. Defendant also admitted to shaking L.C. on two previous occasions when the baby was cranky.

On July 1, 2016, defendant submitted to a psychological evaluation by Dr. Gerard A. Figurelli, arranged by his counsel. In his report, Dr. Figurelli determined that defendant suffered from undiagnosed mental illnesses at the time of L.C.'s death, in particular, depressive, bipolar, and schizoaffective symptoms, and manic or hypomanic episodes. In the past, defendant would self-medicate with alcohol. Dr. Figurelli noted that at the time of his offenses, defendant also suffered from sleep deprivation, stress related to major life events, and grief from losing his first child to a genetic disorder. Defendant was taking psychotropic medication, including Seroquel, an antipsychotic medication, and Remeron, an anti-depressant, which were administered to him while he was incarcerated. Dr. Figurelli opined that defendant was "fully oriented," as to time and place, "manifested no gross evidence of active

² Miranda v. Arizona, 382 U.S. 436 (1966).

psychotic description," and his judgment was "adequate" at the time of the evaluation.

On March 20, 2017, defendant entered into a negotiated plea agreement with the State. Defendant pled guilty to count one, which was amended to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), and the remaining counts of the indictment were dismissed. At his plea allocution, defendant testified he was guilty of the charged offense, that his guilty plea was voluntarily given, he was not under the influence of any medications which impaired his ability to enter his guilty plea, he reviewed the plea form with his attorney, and he was satisfied with plea counsel's services.

Defendant challenged only his sentence, on two separate occasions, which we considered on the Sentence Oral Argument Calendar.³ We remanded twice for the sentencing court to reconsider its application and weighing of the aggravating and mitigating factors, resulting in defendant's sentence being reduced from thirty to twenty-five and ultimately twenty-four years' imprisonment, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and five

³ State v. Choi, Docket Nos. A-4740-16 (Mar. 28, 2018), and A-0743-18 (Aug. 1, 2019).

years of parole supervision. Defendant never filed a direct appeal of his conviction.

Defendant filed a timely PCR asserting his plea counsel was ineffective under the two-part test established in Strickland v. Washington, 466 U.S. 668, 687 (1984),⁴ by failing to file a motion to suppress his statement to the police; failing to investigate a defense—that he accidentally injured L.C. by dropping him; assuring defendant he would receive a sentence of ten to twenty years if he pled guilty; and allowing him to plead guilty despite being confused from his medication.

The PCR court rejected defendant's claims in an oral opinion, finding the alleged errors did not, independently or cumulatively, render his plea counsel ineffective and did not prejudice his defense in any way. As to the first Strickland prong, the court found defendant failed to articulate why his statement to detectives should be suppressed. The court highlighted that defendant voluntarily went to the Bergen County Prosecutor's Office to speak

⁴ To establish ineffective assistance of counsel, a convicted defendant must satisfy the two-part test enunciated in Strickland, 466 U.S. at 687, by demonstrating that: (1) counsel's performance was deficient; and (2) the deficient performance actually prejudiced the accused's defense. The Strickland test has been adopted for application under our State constitution in New Jersey. See State v. Fritz, 105 N.J. 42, 58 (1987).

with detectives, reviewed and voluntarily signed the Miranda form, was not interviewed for a long time, about one hour, did not face aggressive questioning, and answered questions intelligently.

Similarly, the PCR court found no support in the record for defendant's asserted defense that plea counsel was ineffective for not pursuing whether defendant acted recklessly in killing L.C. The PCR court found defendant's argument lacked merit because he pled guilty to aggravated manslaughter, which criminalizes "recklessly causing death," under N.J.S.A. 2C:11-4(a)(1).

The PCR court rejected defendant's contention that he was misled by plea counsel about the sentence he would receive because defendant's argument was contradicted by his statements made at the plea allocution. Defendant testified he voluntarily signed the plea form. The PCR court emphasized that plea counsel negotiated a favorable plea deal for defendant, who faced a life sentence on the murder charge, especially in light of the fact defendant admitted to detectives and Dr. Figurelli that he killed L.C. by shaking him.

Finally, the PCR court found defendant's claim that he was unable to enter a knowing, voluntary, and intelligent plea was incredulous. The record showed the claim contradicted defendant's sworn testimony during the plea hearing and Dr. Figurelli's expert opinion, which determined defendant was "alert,"

"responsive," "focused," able to comprehend questions, and to "express himself in a coherent manner" during the interview. The PCR court emphasized Dr. Figurelli's report indicated that defendant believed his symptoms were ameliorated by taking Seroquel and Remeron, and defendant failed to offer any expert opinion to substantiate his claim that his medications caused him to be confused at the time of his plea allocution. The PCR court also noted Dr. Figurelli's report was provided to the State and used to "negotiate a more favorable plea offer" for defendant.

With respect to Strickland's second prong, the PCR court concluded defendant was unable to demonstrate any prejudice arising from ineffective assistance of plea counsel. The PCR court observed the evidence against defendant was "extremely strong," and "to the extent he had any defense at all, it was not likely to result in an acquittal." The PCR court found defendant failed to show it "would have been rational to reject the plea offer and he probably would have done so." In addition to concluding defendant's claims lacked merit, the PCR court noted all of defendant's claims are barred by Rule 3:22-4(a) because the issues could have been raised on direct appeal and were not.⁵ The

⁵ Rule 3:22-4(a) addresses

PCR court also rejected defendant's cumulative error claim and determined it need not hold an evidentiary hearing.

In his counseled merits brief, defendant raises the following point with subparts for our consideration:

POINT I

THE [PCR COURT] ERRED IN DENYING DEFENDANT'S PETITION WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS CONTENTION THAT HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION FROM PLEA COUNSEL.

First Petition for [PCR]. Any ground for relief not raised in the proceedings resulting in the conviction, or in a post-conviction proceeding brought and decided prior to the adoption of this rule, or in any appeal taken in any such proceedings is barred from assertion in a proceeding under this rule unless the court on motion or at a hearing finds:

- (1) that the ground for relief not previously asserted could not reasonably have been raised in the prior proceeding; or
- (2) that enforcement of the bar to preclude claims, including one for ineffective assistance of counsel would result in fundamental injustice; or
- (3) that denial of relief would be contrary to a new rule of constitutional law under either the Constitution of the United States or the State of New Jersey.

- A. The Prevailing Legal Principles Regarding Claims of Ineffective Assistance Of Counsel, Evidentiary Hearings And Petitions For [PCR].
- B. Plea Counsel Was Ineffective For Failing To File A Motion To Suppress Defendant's Statement.
- C. Plea Counsel Was Ineffective For Allowing Defendant To Plead Guilty While Under The Influence Of Medication.
- D. Plea Counsel Was Ineffective When He Told Defendant That He Would Receive A Sentence Between [Ten] And [Twenty] Years.

In his supplemental, self-authored brief, defendant reiterates the following points:

POINT I

PLEA COUNSEL FAILED TO FILE A MOTION TO SUPPRESS THE STATEMENT TO POLICE.

POINT II

PLEA COUNSEL FAILED TO INVESTIGATE MY DEFENSE.

POINT III

PLEA COUNSEL ASSURED ME THAT IF I PLED GUILTY I WOULD RECEIVE A SENTENCE OF BETWEEN [TEN] AND [TWENTY] YEARS.

POINT IV

PLEA COUNSEL WAS INEFFECTIVE FOR
ALLOWING ME TO PLEAD GUILTY WHILE
UNDER THE INFLUENCE OF MEDICATION.

We find no merit in these arguments and affirm substantially for the reasons expressed in the PCR judge's oral decision. We add the following comments.

II.

The first Strickland prong requires a showing that "counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. A defendant, however, must overcome a strong presumption that counsel rendered reasonable professional assistance. Id. at 689. "The test is not whether defense counsel could have done better, but whether he met the constitutional threshold for effectiveness." State v. Nash, 212 N.J. 518, 543 (2013). Further, the failure to raise unsuccessful legal arguments does not constitute ineffective assistance of counsel. State v. Worlock, 117 N.J. 596, 625 (1990) (citing Strickland, 466 U.S. at 688).

Under the second prong, a defendant must demonstrate his counsel's errors prejudiced the defense such that the defendant was deprived of a fair and reliable outcome. Strickland, 466 U.S. at 687. To prove this element, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

"[B]ald assertions" are insufficient to sustain a defendant's burden of establishing a prima facie ineffective assistance of counsel claim under the Strickland standard. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity," State v. Jones, 219 N.J. 298, 312 (2014), "facts sufficient to demonstrate counsel's alleged substandard performance." Cummings, 321 N.J. Super. at 170.

We review the legal conclusions of a PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004) (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). The de novo standard also applies when reviewing mixed questions of fact and law. Ibid. Where an evidentiary hearing has not been held, as here, we "conduct a de novo review of both the factual findings and legal conclusions of the PCR court." Id. at 421 (emphasis omitted). We apply the aforementioned standard to defendant's ineffective assistance of counsel claims and address each alleged error separately.

A. Failure to File A Motion to Suppress Defendant's Statement

In Point IB of his counseled brief, defendant maintains his plea counsel was ineffective because counsel failed to file a motion to suppress defendant's statement. In his certification in support of his PCR petition, defendant stated

that he "felt pressured by police to provide a statement" and that his "lawyer should have filed a motion to suppress [his] statements as [he] was in an emotional state and not thinking clearly." Defendant argues he could not have given a voluntary statement to the detectives because he suffered from "severe psychiatric illness." We find no support in the record for defendant's contentions.

It is well established that in determining if a person's waiver of his or her Miranda rights was voluntary, knowing, and intelligent, the court must consider a variety of factors. State v. Knight, 183 N.J. 449, 462-63 (2005). Among those factors are:

[T]he totality of the circumstances, including both the characteristics of the defendant and the nature of the interrogation. Relevant factors to be considered include the suspect's age, education and intelligence, advice concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved.

[Ibid. (quoting State v. Galloway, 133 N.J. 631, 654 (1993)); see also State v. Ahmad, 246 N.J. 592, 611 (2021) (applying a totality of the circumstances approach to determine whether custodial statements are the product of free will).]

Although defendant belatedly claims he was mentally ill at the time he gave his statement to police, he never raised a diminished capacity or insanity

defense. Defendant voluntarily went to the prosecutor's office, waived his Miranda rights, and gave a statement, which was consistent with the overwhelming evidence against him. Moreover, it is not apparent, and defendant does not explain, how his symptoms rendered him incapable of understanding the Miranda warnings or the Miranda form he signed.

The record shows defendant indicated to the detectives he could "read and write in English," and the detectives explained to defendant that he had the right to speak to an attorney and have an attorney present during questioning. Defendant was not threatened and never requested an attorney during the interview. The PCR court correctly determined there is nothing suggested in the totality of the circumstances that plea counsel was constitutionally deficient in failing to file a meritless motion to suppress under the first Strickland prong.

Defendant also fails to show prejudice under the second Strickland prong. The record shows defendant was caring for L.C. alone on July 28, 2015, and the undisputed medical evidence revealed that L.C. had been physically abused before that date. Thus, the evidence against defendant was overwhelming absent his incriminating statement to detectives.

Moreover, defendant only highlights Dr. Figurelli's diagnosis of his mental disorders in concluding he was not thinking clearly when he gave his

statement to detectives. Defendant's argument is unavailing because he ignores Dr. Figurelli's actual findings, specifically, that defendant "manifested no instability or lability of mood," "no evidence of emotional dyscontrol," "no heightened aggressivity or hostility," and no "significant cognitive impairment." Nothing in Dr. Figurelli's report indicates defendant was suffering from any mental condition that impaired his ability to speak voluntarily with detectives.

In sum, defendant failed to establish his plea counsel's failure to file a motion to suppress his statement rendered his representation "below an objective standard of reasonableness." Strickland, 466 U.S. at 688.

B. Failure To Prevent Defendant From Pleading Guilty While Under The Influence of Medication.

In Point IC, defendant claims his plea counsel was ineffective for allowing him to plead guilty while under the influence of Seroquel, which made him feel confused and "unable to appreciate the gravity and seriousness" of the proceeding. Again referencing Dr. Figurelli's report, defendant asserts plea counsel was aware of the expert's findings, which included defendant's "severe psychiatric illnesses" and treatment with Seroquel and Remeron while incarcerated. Defendant also refers to the Yoseop Personality Test results, and other data in Dr. Figurelli's report, which suggest "active episodes of

[defendant's] psychiatric illnesses can manifest in impaired reality testing and compromised judgment." We are unpersuaded.

Defendant's argument that his plea was not knowing and voluntary is contradicted by his plea colloquy. At the plea allocution, the court thoroughly questioned defendant about his understanding of the proceeding and whether he was under the influence of any drugs, alcohol, or medications that might impair his ability to enter into the plea, to which he responded "no." The court carefully reviewed the plea form with defendant and confirmed he initialed each page and signed it. Defendant testified he understood he was waiving a trial by jury and that he was satisfied with the services of his attorney.

Defendant presented no psychological, psychiatric, or pharmacological report bearing on his claim of confusion and inability to comprehend the impact of the plea proceeding. Moreover, defendant's reliance on Dr. Figurelli's interpretation of the Yoseop Personality Test results is misguided because the expert did not express an opinion or conclusion as to defendant's mental state at the time of the plea hearing, which took place eight months after the report was issued. Dr. Figurelli's report states defendant's attorney referred him for an evaluation "in order to assess his cognitive, social, emotional, and adaptive functioning" and "identify any psychiatric illness [defendant] may experience"

and the "impact, if any . . . on his alleged offending behavior." (emphasis added). Defendant failed to provide factual or expert evidence that he was, in fact, suffering from any such impairment at the time of his plea allocution.

C. Failure To Obtain A Ten to Twenty Year Sentence

In Point ID of his counseled brief, defendant argues his counsel misled him as to his sentence exposure "assuring" him it would be ten to twenty years' imprisonment. Based on that advice, defendant contends he agreed to enter a guilty plea. Defendant's contention is unavailing and requires little comment.

As noted by the PCR court, defendant was queried at the plea hearing about his understanding that the State would seek a thirty-year sentence but that his counsel would request a sentence "in the lower-end of the [ten]-to-[thirty]-year range." The plea form that defendant reviewed, initialed, and signed, confirms this understanding. The record supports the finding that defendant's plea was entered knowingly and voluntarily. The PCR court correctly found defendant's claim "is supported by nothing more than [his] self-serving statements." See State v. Porter, 216 N.J. 343, 355 (2013) (recognizing a defendant's PCR petition must contain "specific facts and evidence supporting the allegations"). Our Court has stated "a defendant has the right not to be 'misinformed' about a material element of a plea agreement and to have his or

her 'reasonable expectations' fulfilled." State v. Bellamy, 178 N.J. 127, 134 (2003) (first quoting State v. Nichols, 71 N.J. 358, 361 (1976); then quoting State v. Howard, 110 N.J. 113, 122 (1988)).

Here, the PCR court highlighted that defendant was originally sentenced to the thirty-year maximum sentence. After two sentencing appeals, the PCR court stressed defendant's sentence was reduced to twenty-four years, "which is very close to the range . . . that he claims that his counsel promised him." The PCR court also rejected defendant's argument that he did not read the plea form as a self-serving statement "contradicted by all the evidence in the case."

The record is devoid of any evidence supporting defendant's sentencing argument, and he failed to proffer any meritorious arguments under either Strickland prong. We affirm the PCR court's rejection of the sentencing argument for the reasons set forth in its thoughtful and detailed opinion from the bench.

III.

As defendant failed to establish a prima facie ineffective assistance of counsel claim under Strickland, there was no need for an evidentiary hearing. See State v. Preciose, 129 N.J. 451, 462 (1992) ("[T]rial courts ordinarily should grant evidentiary hearings to resolve ineffective assistance of counsel claims if

a defendant has presented a prima facie claim in support of [PCR]."). The mere assertion of a PCR claim does not entitle a defendant to an evidentiary hearing. Cummings, 321 N.J. Super. at 170. The PCR court was therefore within its discretion in denying a hearing. See State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013) ("[W]e review under the abuse of discretion standard the PCR court's determination to proceed without an evidentiary hearing.").

Defendant's supplemental brief reiterates the arguments presented in his counseled merits brief and fails to comply with Rule 2:6-2(a). We have nonetheless considered his contentions and conclude our disposition makes it unnecessary to address them separately, or they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). To the extent we have not expressly addressed any arguments made in support of defendant's appeal, we have determined 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.


CLERK OF THE APPELLATE DIVISION