

RECORD IMPOUNDED

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1977-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYRELL J. LEE,

Defendant-Appellant.

Argued February 6, 2023 – Decided March 21, 2023

Before Judges Whipple and Marczyk.

On appeal from the Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 13-10-
2547.

Stefan Van Jura, Assistant Deputy Public Defender,
argued the cause for appellant (Joseph E. Krakora,
Public Defender, attorney; Stefan Van Jura, of counsel
and on the brief).

Hannah Kurt, Special Deputy Attorney General/Acting
Assistant Prosecutor, argued the cause for respondent
(Theodore N. Stephens II, Acting Essex County
Prosecutor, attorney; Emily M. M. Pirro, Special

Deputy Attorney General/Acting Assistant Prosecutor,
of counsel and on the brief).

PER CURIAM

Defendant Tyrell Lee appeals from a December 17, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

Defendant raises the following issue on appeal:

POINT I: THE COURT ERRONEOUSLY DENIED THE PCR WITHOUT HOLDING AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

Over the course of five years, defendant violently raped and assaulted a number of women in Irvington. On October 7, 2013, an Essex County grand jury charged defendant with forty-six counts, including kidnapping, aggravated sexual assault, aggravated assault, terroristic threats, and various weapons offenses. Defendant agreed to plead guilty to four counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a); three counts of second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); and one count of fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d). The remaining charges were dismissed, and defendant was sentenced to an eight-year prison term.

As part of the plea process, defendant signed the plea forms and indicated he understood each of the clauses contained therein. Relevant to this appeal, defendant specifically indicated he understood that, because he was pleading guilty to aggravated sexual assault, he could be involuntarily civilly committed pursuant to the New Jersey Sexually Violent Predator Act, N.J.S.A. 30:4-27.24 to -27.38, for an indefinite term following his prison sentence, if the court found a need for such commitment.

Defendant also represented he understood this consequence at his plea hearing:

[The court]: Do you understand that because of the crimes that you're pleading guilty to[,] you will have to submit to a psychological examination, which is known as an Avenel report? Do you understand that?

[Defendant]: Yes.

[The court]: And depending upon what that examination shows, if it shows that you have a pattern of repetitive or compulsive behavior that you may be sentenced to treatment at a facility other than prison. Do you understand that?

[Defendant]: Yes, sir.

[The court]: And that the term of your confinement at the facility may be greater than your prison sentence; do you understand that?

[Defendant]: Yes.

After defendant served his prison term, he was civilly committed.

On January 5, 2021, defendant filed a PCR petition arguing he received ineffective assistance from his assigned trial counsel. In support of this contention, he certified 1) counsel "downplayed the importance of the plea forms, saying that they were really nothing"; 2) counsel "never even explained to [him] what civil confinement was, let alone inform[ed] [him] of the possible civil commitment consequences"; 3) defendant never actually read the plea forms; and 4) during the plea hearing, he told the court he understood because he trusted his attorney and "wanted to go home." He also alleged the court never informed him of the potential for indefinite civil confinement. He averred the combination of these circumstances caused him to plead guilty, but he would have proceeded to trial if he had been better informed.

The PCR court denied relief, noting the "overwhelming" nature of the evidence in the underlying assaults. It also reasoned "defendant is now basically saying here . . . everything that happened before was a lie. And now he's asking the [c]ourt to believe what he's saying now [is] the truth." The PCR court found defendant had not established a prima facie claim under the Strickland¹ standard. This appeal followed.

¹ Strickland v. Washington, 466 U.S. 668, 694 (1984).

"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)). We give deference to a PCR court's factual findings when they are supported by sufficient credible evidence. Ibid.; State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Nash, 212 N.J. at 540). We review a PCR court's interpretation of law de novo. Nash, 212 N.J. at 540-41.

When a PCR claim concerns issues of fact not in the record, the court should grant an evidentiary hearing if, viewed 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 of counsel should be granted when a defendant has alleged a prima facie claim that would satisfy the Strickland 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 argues because his PCR certifications must be viewed in the light most favorable to him, he has made a prima facie claim of ineffective assistance of counsel, and thus is entitled to an evidentiary hearing. We disagree.

"The mere raising of a claim of [ineffective assistance of counsel] does not entitle the defendant to an evidentiary hearing." State v. Peoples, 446 N.J. Super. 245, 254 (App. Div. 2016) (citing State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999)). "[I]n order to establish a prima facie claim, a petitioner must do more than make bald assertions that he was denied the effective assistance of counsel." Cummings, 321 N.J. Super. at 170; State v. Jones, 219 N.J. 298, 311-12 (2014). Instead, a petitioner must allege specific facts that demonstrate counsel's substandard performance. Cummings, 321 N.J. Super. at 170.

Those alleged facts must be something more than "bare assertion[s]." Id. at 171. In Cummings, the defendant presented an alibi to the PCR court after his counsel supposedly failed to do so at trial. Ibid. This, without more, was insufficient to constitute a prima facie case of ineffective assistance. Ibid.

("We note that [the defendant] has not supplied an affidavit or certification of [the alibi witness] that would support [his] alibi."). The court denied an evidentiary hearing. Ibid.

State v. Maldon illustrates the point. 422 N.J. Super. 475 (App. Div. 2011). In Maldon, the defendant was similarly charged with a sexual offense. Id. at 478. He also signed a plea agreement which contained a clause informing him of the potential for involuntary civil commitment. Ibid. When he was committed after serving his sentence, he filed a claim for PCR, alleging ineffective assistance of counsel because his trial attorney told him "that he would not be civilly committed." Id. at 479. The PCR court denied Maldon's petition. Id. at 481. We reversed and remanded for an evidentiary hearing, reasoning defendant had established a prima facie claim because his attorney had written "N/A" next to the civil commitment clause of the plea form. Id. at 482.

However, here, defendant's present testimony plainly contradicts his earlier sworn testimony and signed plea agreement, wherein he told the trial court he understood the potential consequences of that deal. The PCR court's conclusion there is no credible evidence to support defendant's claim is analyzed on an abuse of discretion standard. Gideon, 244 N.J. at 551. Unlike

in Maldon, defendant cannot point to anything in the record to corroborate his present assertions. The PCR court's weighing of the evidence is rational and grounded in the record.

Even if we accept defendant's assertion, to establish a claim of ineffective assistance of counsel, a defendant must show 1) his counsel's performance was deficient, and 2) the deficient performance prejudiced his defense. State v. Fritz, 105 N.J. 42, 52 (1987) (quoting Strickland, 466 U.S. at 687).

Defendant has alleged counsel told him the plea forms "were really nothing," and as a result, he did not read them before circling yes on each clause and signing. If defendant's allegations are accepted as true and viewed in the light most favorable to him, defendant might plausibly have satisfied the first Strickland inquiry. See Maldon, 422 N.J. Super. at 482; see also State v. Antuna, 446 N.J. Super. 595, 599-601 (App. Div. 2016). However, under the second prong of Strickland, a defendant must demonstrate prejudice. State v. Gaitan, 209 N.J. 339, 350 (2012). In the context of a guilty plea, a defendant must show "that there is a reasonable probability that, but for counsel's errors, [he] would not have pled guilty and would have insisted on going to trial."

State v. DiFrisco, 137 N.J. 434, 457 (1994) (emphasis added) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

Here, defendant was explicitly informed by the court that he faced involuntary commitment following his prison term. He unambiguously responded he understood this consequence. Defendant's assertion "the court did not inform me of the potential for civil confinement or that such commitment might be for an indefinite period of time" is false. The court informed defendant and gave him a clear opportunity to overcome any deficiency of counsel and insist on going to trial. Counsel's deficiency does not bear a "but-for" relationship with defendant's decision to plead guilty.

Defendant must also persuade the court that it would have been rational to reject the plea bargain. State v. O'Donnell, 435 N.J. Super. 351, 371 (App. Div. 2014) (citing Padilla v. Kentucky, 559 U.S. 356, 372 (2010)). Here, he cannot do that. As the PCR judge noted:

[T]here's overwhelming evidence against [defendant] There's an identification. There's physical evidence. We have women that had teeth knocked out, stitches and so forth. Clearly evidence of acts of violence. . . . [A]lso add to that . . . the DNA matching on three out of the four women. That is very, very significant.

In light of this evidence, defendant makes no argument and cites no evidence going to trial would have been the more rational decision. He does not even claim he is, in fact, innocent. He simply asserts he would have chosen to go to trial.

Plus, defendant faced a period of incarceration of up to 120 years for the forty-six counts he was indicted on. Under the plea agreement, he received eight. Due to the nature of his offenses, he would have been subject to potential civil commitment at the conclusion of either term. N.J.S.A. 30:4-27.24 to -27.38. The PCR court was correct in concluding defendant behaved rationally in accepting the plea, regardless of counsel's alleged errors.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION