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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3086-21**

STATE OF NEW JERSEY,

Plaintiff- Respondent,

v.

OLIVER JACKSON,
a/k/a ALI, and
OLICER JACKSON,

Defendant-Appellant.

Submitted September 11, 2023 – Decided September 25, 2023

Before Judges Berdote Byrne and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Indictment No. 16-09-1195.

Joseph E. Krakora, Public Defender, attorney for
appellant (Abby P. Schwartz, Designated Counsel, on
the brief).

Esther Suarez, Hudson County Prosecutor, attorney for
respondent (Meagan E. Free, Assistant Prosecutor, on
the brief).

PER CURIAM

Defendant Oliver Jackson appeals from an order denying his post-conviction relief (PCR) petition without an evidentiary hearing. In rejecting defendant's PCR petition, the PCR judge, Judge Martha Lynes, issued a written opinion addressing defendant's arguments, which he reprises in this appeal. We affirm substantially for the reasons set forth in Judge Lynes's thorough opinion.

I.

On July 26, 2016, a Hudson County grand jury returned Indictment No. 16-07-1011, charging defendant with burglary, N.J.S.A. 2C:18-2A(1).

On September 18, 2016, a Hudson County grand jury returned Indictment No. 16-09-1195, charging defendant with second-degree robbery, N.J.S.A. 2C:15-1 (count one); third-degree burglary, N.J.S.A. 2C:18-2 (count two); third-degree aggravated assault, N.J.S.A. 2C:12-1 b(2) (count three); third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-4(d) (count four); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count five); and third-degree terroristic threats, N.J.S.A. 2C:12-3(b) (count six).

On September 22, 2016, a Hudson County grand jury returned Indictment No. 16-09-1248, charging defendant with first-degree armed robbery N.J.S.A. 2C:15-1 (count one); fourth-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-5(d) (count two); third-degree possession of a weapon

for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count three); fourth-degree possession of a prohibited weapon, N.J.S.A. 2C:39-3(e) (count four); and fourth degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-5(d) (count five).

On February 13, 2017, defendant entered a plea agreement resolving all charges in the three indictments. Under the terms of the agreement, defendant pleaded guilty to one count of first-degree robbery, second-degree robbery, and third-degree burglary. In exchange for defendant's guilty plea, the State agreed to recommend an aggregate sentence of fifteen years subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Defendant was allowed to argue for a lesser sentence.

On April 21, 2017, the judge sentenced defendant to a ten-year prison term subject to NERA, to run concurrently on all three counts. The same day, a judgment of conviction was entered.

Defendant did not file a direct appeal challenging his conviction or sentence. Instead, in November 2022, defendant, then self-represented, filed a petition for post-conviction relief (PCR), claiming trial counsel was ineffective during pre-trial and sentencing. Thereafter, defendant was assigned PCR

counsel, and counsel filed an amended PCR petition and defendant's supplemental certification.

The amended petition essentially reiterated defendant's initial submission. Defendant argued trial counsel was ineffective because he: failed to review discovery and develop a defense strategy based on diminished capacity and intoxication; failed to visit defendant during the pre-trial phase; failed to petition for defendant's placement in a drug program; failed to offer mitigating evidence at sentencing and failed to request and argue for a lower sentence. Defendant further argued that he was entitled to an evidentiary hearing.

In defendant's self-represented petition, he requested a downgraded sentence under State v. Natale, 184 N.J. 458 (2005), a remand for sentencing, and an application for Drug Court.¹

Judge Lynes heard oral argument on January 27, 2022. On February 24, 2022, the judge entered an order and written opinion denying defendant's PCR petition without an evidentiary hearing. The judge expressly rejected defendant's claims that trial counsel was ineffective by failing to review discovery and failing to present a defense strategy that would have resulted in a lower sentence. Addressing defendant's claims under the two-prong

¹ Effective January 1, 2022, Drug Court was renamed Recovery Court.

Strickland/Fritz test, the judge concluded defendant failed to establish a prima facie case of ineffective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-prong test in New Jersey)

At the outset, Judge Lynes noted defendant was represented by experienced trial counsel who "acted reasonably, and his strategy was preceded by a 'thorough investigation of the law and facts.'" The judge found that because of counsel's "zealous advocacy," defendant was sentenced to five years less than the term sought by the State.

The judge further noted trial counsel raised the issue of defendant's drug addiction "multiple times" during sentencing. The judge concluded defendant's argument that trial counsel failed to pursue defendant's history of drug use and time spent in several substance abuse facilities was "contradicted" by the record because the sentencing judge also considered defendant's history.

The judge similarly rejected defendant's claim that trial counsel was ineffective for failing to present a defense of diminished capacity or voluntary intoxication. The judge determined defendant made "bald assertions that he was intoxicated during the crimes" and did not provide any evidence that his drug addiction prevented or interfered with the formation of the requisite intent for

the charged offenses. State v. Baum, 224 N.J. 147, 161 (2016). Nor did defendant provide any evidence that his level of intoxication was high enough to negate any element of any of the offenses. State v. Cameron, 104 N.J. 42, 54 (1986). The judge therefore concluded defendant was not prejudiced because he received a lighter sentence.

Additionally, the judge determined "[defendant's] drug addiction [was] not a mitigating factor at sentencing." The judge further determined defendant's age and the lack of evidence of health issues did not demonstrate "excessive hardship." Judge Lynes recited "counsel's advocacy was still convincing enough for [the judge] to impose a lesser sentence."

The judge rejected defendant's reliance on Natale. The judge reiterated the sentencing judge's findings of aggravating factors and no mitigation factors; yet, at sentencing the judge considered defendant's drug addiction. Thus, defendant was "sentenced within the statutory range of all crimes in accordance with Natale."

As to defendant's request for an application to drug court, the judge acknowledged at sentencing that trial counsel "correctly stated" defendant was ineligible for drug court because of his first-degree robbery conviction.

Lastly, the judge stated defendant failed to provide the court with post-conviction rehabilitative efforts.

II.

Defendant presents the following arguments for our consideration:

POINT I

COUNSEL'S FAILURE TO REVIEW DISCOVERY WITH DEFENDANT RESULTED IN THE FAILURE TO FORMULATE ANY DEFENSE TO THE CHARGES, TO LEARN OF DEFENDANT'S STATE OF MIND DURING THE COMMISSION OF THE OFFENSES, AND THE FAILURE TO ARGUE FOR A SENTENCE IN THE RANGE OF A LOWER DEGREE. THIS WAS INEFFECTIVE ASSISTANCE OF COUNSEL AND IT VIOLATED DEFENDANT'S CONSTITUTIONAL RIGHTS.

- A. The Failure to Visit Defendant and Review Discovery was Ineffective Assistance of Counsel
- B. Counsel's Failure to Review Discovery with Defendant Foreclosed any Meaningful Discussion about Sentencing and Denied Defendant the Effective Assistance of Counsel.
- C. Counsel Should Have Argued for Defendant to be Sentenced to a Degree Lower than He Plead Guilty to.

III.

We review the legal conclusions of a PCR court de novo when no evidentiary hearing is conducted. State v. Harris, 181 N.J. 391, 419 (2004) (citing Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J.

366, 378 (1995)); State v. Aburoumi, 464 N.J. Super. 326, 338-39 (App. Div. 2020). The de novo standard of review also applies to mixed questions of fact and law. Id. at 420. Where, as here, an evidentiary hearing has not been held, it is within our authority "to conduct a de novo review of both the factual findings and legal conclusions of the PCR court." Id. at 421. 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).

We consider defendant's ineffective assistance of counsel claims under the two-prong Strickland/Fritz standard. To establish a claim of ineffective assistance of counsel, a defendant must satisfy both prongs of the Strickland test: (1) "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and (2) "the deficient performance prejudiced the defense." Strickland, 466 U.S. at 687; accord Fritz, 105 N.J. at 58.

To sustain the burden established under the Strickland standard, a defendant "must do more than make bald assertions that [they were] denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). "[A] defendant must allege specific facts and evidence supporting [their] allegations." State v. Porter, 216 N.J. 343, 355 (2013). The

facts upon which a PCR claim is based must be "supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Cummings, 321 N.J. Super. at 170. A defendant is not automatically entitled to an evidentiary hearing. State v. Porter, 216 N.J. 343, 355 (2013).

Additionally, where a guilty plea is involved, the defendant must prove "a reasonable probability [exists] that, but for counsel's errors, [the defendant] would not have [pleaded] guilty and would have insisted on going to trial." State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (second alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).

Before us, defendant reiterates the arguments that were presented to the PCR judge and rejected. Having conducted a de novo review, we are satisfied Judge Lynes did not abuse her discretion and affirm substantially for the reasons explained in her well-reasoned opinion. Moreover, defendant's arguments are unavailing because he did not establish a prima facie showing of ineffective assistance of counsel. See Strickland, 466 U.S. at 687; Fritz, 105 N.J. at 58, 519.

Defendant also argues that trial counsel was ineffective during sentencing. We agree with Judge Lynes that defendant's contention that counsel failed to

argue for any mitigating factors is belied by the record. The record demonstrates trial counsel proffered defendant's drug addiction "multiple times" during sentencing which was considered. Moreover, defendant fails to provide any evidence that additional mitigating factors would have changed the outcome. Defendant received exactly what he bargained for in his plea agreement, a lighter sentence.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION