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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3415-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HAROLD M. CARTER,

Defendant-Appellant.

Submitted December 6, 2022 – Decided February 15, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 17-11-0798.

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

William A. Daniel, Union County Prosecutor, attorney for respondent (Joseph M. Nielsen, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

In this appeal for post-conviction relief, defendant, Harold Carter, requests we consider whether he was denied effective assistance of counsel. Defendant argues sentencing counsel was ineffective in failing to provide the court with an expert report or medical records regarding his alleged mental condition to mitigate his sentence term. He argues sentencing counsel's ineffective performance requires a new sentencing hearing or an evidentiary hearing.

Because defendant fails to meet his burden of demonstrating sentencing counsel's performance was deficient and fails to demonstrate he suffered prejudice, we affirm substantially for the reasons set forth by Judge Candido Rodriguez, Jr. in his well-reasoned, twenty-nine-page written opinion. We add the following brief comments.

On January 8, 2018, defendant pled guilty to one count of second-degree burglary, contrary to N.J.S.A. 2C:18-2(a)(1), and three counts of first-degree carjacking, N.J.S.A. 2C:15-2(a)(1), (2), and (3), for offenses committed in Union County.¹ In exchange for the guilty plea, the State recommended a ten-

¹ Defendant also pled guilty in Essex County on January 16, 2018, to one count of first-degree carjacking, N.J.S.A. 2C:15-2(a)(2) and was sentenced to twelve years imprisonment, subject to the eighty-five percent parole ineligibility pursuant No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

year imprisonment term as to the burglary offense and fifteen years for the carjacking counts, all to run concurrently, subject to NERA.

On March 9, 2018, defendant was sentenced pursuant to the terms in the plea agreement. The sentence was concurrent to the Essex County sentence, which was consistent with the plea agreement.

Despite the plea agreement, defense counsel urged the sentencing court to sentence defendant to twelve years. In support, defense counsel asserted defendant suffered a serious brain injury prior to the offenses. Defense counsel urged the sentencing court to consider defendant's brain injury in support of mitigating factors two—"defendant did not contemplate . . . [his] conduct would cause or threaten serious harm"—and four—"[t]here were substantial grounds tending to excuse or justify . . . defendant's conduct"—arguing defendant was "out of his mind" at the time of the incidents and such behavior was contrary to his character. N.J.S.A. 2C:44-1(b)(2) and (4). Sentencing counsel did not present proofs, other than reading a statement from defendant's nephew, and he did not have defendant evaluated by a medical expert. PCR counsel asserted defense counsel refused to have defendant medically evaluated because defendant's family could not afford it.

On March 31, 2021, at the PCR hearing, PCR counsel argued sentencing counsel was ineffective for failing to have defendant evaluated for his brain injury or presenting the sentencing court with medical documentation or an expert opinion in support of mitigating factors two and four. The PCR judge, who presided over all the proceedings in this matter, denied defendant's petition and request for an evidentiary hearing, reasoning defendant's arguments were made without specificity. This appeal followed.

A PCR judge's legal conclusions are reviewed de novo, and where, as here, the judge declines to hold an evidentiary hearing, we may "conduct a de novo review of both the factual findings and legal conclusions" of the PCR judge. State v. Harris, 181 N.J. 391, 419, 421 (2004).

In a petition for PCR asserting ineffective assistance of counsel, we are guided by the standards set forth in Strickland v. Washington, 466 U.S. 668 (1984) and State v. Fritz, 105 N.J. 42 (1987), which adopted the Strickland standard in New Jersey. The PCR court should grant an evidentiary hearing when defendant establishes a prima facie case of ineffective assistance of counsel pursuant to Strickland. See R. 3:22-10(b).

Pursuant to Strickland/Fritz, a defendant will be entitled to PCR for ineffective assistance of counsel if he shows, by a preponderance of the

evidence, (1) "[defendant's] counsel's performance was deficient[.]" and (2) this "deficient performance prejudiced the defense." Id. at 52 (quoting Strickland, 466 U.S. at 687); State v. Echols, 199 N.J. 344, 357 (2009). When the matter involves a guilty plea, the second prong requires defendant establish "a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial." State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)). Moreover, the defendant must show "that a decision to reject the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372 (2010); State v. Maldon, 422 N.J. Super. 475, 486 (App. Div. 2011).

Defendant argues sentencing counsel was ineffective for failing to produce an expert's report or other medical records in support of mitigating factors two and four. Defendant's reliance on State v. Hess is misplaced. 207 N.J. 123 (2011). In Hess, our Supreme Court held "[failing] to present mitigating evidence or argue for mitigating factors" may establish ineffective assistance of counsel. Id. at 154. However, unlike Hess, sentencing counsel was not forbidden by the terms of the plea agreement from arguing certain mitigating factors existed nor did counsel withhold certain information from the

trial judge. Id. at 153. Rather, counsel argued in support of mitigating factors two and four at sentencing, albeit unsuccessfully. See also State v. Worlock, 117 N.J. 596, 625 (1990) (acknowledging "failure to raise unsuccessful legal arguments does not constitute ineffective assistance of counsel"). Further, while sentencing counsel did not produce an expert report or other medical documentation to support the theory defendant's brain injury contributed to his behavior, counsel did produce a letter from defendant's nephew which corroborated defendant's injury caused him to behave differently. Thus, we agree with the PCR judge that sentencing counsel's performance did not fall below an objective standard of reasonableness, and "counsel [did not make] errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant." Strickland, 466 U.S. at 687-88.

In addition, defendant fails to satisfy the second prong of the Strickland/Fritz standard. We affirm because defendant has failed to show a reasonable probability existed that, but for sentencing counsel's errors "[the defendant] would not have pled guilty and would have insisted on going to trial[.]" Núñez-Valdéz, 200 N.J. at 139 (alteration in original) (quoting DiFrisco, 137 N.J. at 457)[.], or "a decision to reject the plea bargain would have been rational under the circumstances[.]" Padilla, 559 U.S. at 372.

The plea agreement defendant accepted was highly favorable. Defendant was facing an ordinary term of imprisonment of ten to thirty years for each first-degree carjacking count and five to ten years for second-degree burglary. See N.J.S.A. 2C:15-2(b), :18-2(b), :43-6(a)(2). The sentencing judge also found aggravating factors three, risk that defendant will commit another offense, six, prior record and seriousness of the offenses, and nine, deterring defendant and other from violating the law, present due to defendant's criminal history and the seriousness of the offenses. See N.J.S.A. 2C:44-1(a)(3), (6), and (9). Indeed, the sentencing judge noted "even though I could sentence you to a greater sentence[,] I will give you the benefit of your plea agreement." Furthermore, after receiving an expert report from PCR counsel, the PCR judge said the presentment of such corroborating information would not have changed his opinion at sentencing.

Defendant makes the bald assertion that had sentencing counsel presented further corroborating information to the sentencing judge, his sentence would have been different, and he does not demonstrate a reasonable person would not otherwise have accepted the plea deal. See Padilla, 559 U.S. at 372; State v. Porter, 216 N.J. 343, 355 (2013). In light of the favorable and negotiated plea agreement, we conclude Judge Rodriguez's decision not to stray from the plea

agreement was consistent with the record. See State v. S.C., 289 N.J. Super. 61, 71 (App. Div. 1996) ("While the sentence imposed must be a lawful one, the court's decision to impose a sentence in accordance with the plea agreement should be given great respect, since a 'presumption of reasonableness . . . attaches to criminal sentences imposed on plea bargain defendants.'" (quoting State v. Sainz, 107 N.J. 283, 294 (1987))).

In sum, we affirm Judge Rodriguez's denial of post-conviction relief.

Affirmed.

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



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