SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3479-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VICTOR F. HUERTAS, a/k/a
VICTOR HUERTAS

Defendant-Appellant.

Submitted May 15, 2023 – Decided June 12, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 17-03-0853.

Joseph E. Krakora, Public Defender, attorney for appellant (Brian D. Driscoll, Designated Counsel, on the brief).

Grace C. MacAulay, Camden County Prosecutor, attorney for respondent (Jason Magid, Assistant Prosecutor, of counsel and on the letter brief).

PER CURIAM

Defendant Victor F. Huertas appeals from a June 3, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. After considering defendant's arguments, we affirm.

On the evening of December 28, 2016, defendant was pulled over after an officer observed him driving on the eastbound shoulder of Route 38. Upon approaching the vehicle, the officer smelled marijuana and proceeded to search the vehicle. The search uncovered suspected heroin and other drug paraphernalia, as well as three firearms: an Uzi style submachinegun, a sawed-off shotgun, and a handgun. Defendant was arrested and initially charged with eight counts of various weapons and controlled dangerous substance offenses.

After unsuccessfully attempting to suppress the results of the search, defendant pled guilty to N.J.S.A. 2C:39-7(b)(1), which prohibits certain previously convicted persons from possessing firearms. He was sentenced to an eight-year prison term, with a five-year period of parole ineligibility, in accordance with the plea. Defendant filed a direct appeal, which resulted in our affirming his convictions but remanding for the correction of his jail credits. State v. Huertas, No. A-1959-17 (App. Div. 2019) (Slip op. at 1)

He then filed for PCR, alleging the traffic stop which precipitated the search was pretextual, and that his counsel during the suppression hearing was

ineffective for failing to challenge the officer's basis for conducting the stop. The PCR court was unpersuaded. It noted the motion judge had found the testimony of the officer who conducted the stop to be credible, and therefore reasoned the State had established probable cause to conduct the search. The PCR court also found defendant had failed to make out a prima facie case of ineffective assistance warranting an evidentiary hearing on the issue. This appeal followed.

"[PCR] 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 defer to the PCR court's factual findings so long as they are supported by sufficient credible evidence in the record. State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Nash, 212 N.J. at 540).

An evidentiary hearing on an ineffective assistance claim must be granted when a defendant has alleged a prima facie claim that would satisfy the standard designated by Strickland v. Washington, 466 U.S. 668, 694 (1984). Preciose, 129 N.J. at 462. If a prima facie case is made, a hearing must be held; we do

not presume the outcome of the hearing. State v. Russo, 333 N.J. Super. 119, 140 (App. Div. 2000). We review 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 asserts his trial counsel was ineffective because she failed to argue the motor vehicle violation was a mere pretext for a traffic stop and search of the vehicle. He also contends defense counsel committed reversable error by not calling him to testify on his own behalf. To constitute ineffective assistance of counsel, defendant must show both: 1) counsel's performance was deficient—"that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed" by the Constitution; and 2) as a result of that deficiency, he suffered actual prejudice—"a reasonable probability that, but for counsel's . . . errors, the result of the proceeding would have been different." State v. Fritz, 105 N.J. 42, 52 (1987) (adopting Strickland). Mere differences in strategy do not constitute ineffective assistance; there is a "strong presumption" that counsel's conduct during a criminal proceeding rises to the level required by the Constitution. Strickland, 466 U.S. at 668-69.

At the motion to suppress hearing, the arresting officer testified he observed defendant travelling on the right-hand shoulder of the highway, while

attempting to pass a car. He initiated a stop due to this violation, and while speaking with defendant, detected the odor of marijuana, which led him to search the car. The motion judge found this testimony credible, and that it established probable cause, despite defense counsel's argument to the contrary. The record also indicates—contrary to defendant's assertions on the present appeal—that motion counsel specifically cross examined the officer on issues concerning when the officer chose to activate his body and dash cameras, as well as potential entrapment due to the particular nature of the traffic pattern where defendant was pulled over.

That the motion court did not adopt the inferences sought by defendant does not render his counsel's performance ineffective on the basis of Strickland or Fritz. The conclusion of the PCR court was supported by sufficient, credible evidence. There are a variety of strategic reasons counsel might not have thought it wise to call on defendant to testify. Defendant has demonstrated neither deficient performance, nor prejudice.

To the extent we have not addressed defendant's remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.