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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3518-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL WILLIAMS,

Defendant-Appellant.

Submitted December 5, 2022 – Decided January 17, 2023

Before Judges Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment No. 16-06-0552.

Joseph E. Krakora, Public Defender, attorney for appellant (Howard W. Bailey, Designated Counsel, on the brief).

Angelo J. Onofri, Mercer County Prosecutor, attorney for respondent (Samantha Eaton, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Michael Williams appeals from an order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Having reviewed the record and the applicable legal standards, we affirm in part and reverse in part.

I.

On December 20, 2015, petitioner went to Berta Gist's home with gasoline to start a fire at the property. Gist was his girlfriend and lived in the property with her mother and three children.

Petitioner pled guilty to second - degree attempted aggravated arson, N.J.S.A. 2C:17-1(a)(1). In exchange, the State recommended a five-year term of incarceration subject to the No Early Release Act (NERA), N.J.S.A. 20:43-7.2, with a concurrent seven-year prison term on an unrelated indictment.

At the plea colloquy, petitioner testified that he read and understood the plea agreement, reviewed it with counsel, and answered the questions in the plea documents truthfully. Petitioner testified he had pled guilty before and was familiar with the process. The court next asked petitioner if he understood that by accepting the plea agreement, he was giving up his constitutional rights to a jury trial, to confront witnesses, and to remain silent. He answered "yes." The court then explained to petitioner the maximum sentencing exposure for each

crime, and the effect of NERA on his parole date. The court asked petitioner if there was anything about the sentence that he did not understand. Petitioner replied, "no." Petitioner testified no one made promises to him about the resolution of his case. He testified his guilty plea was voluntary, and he was not threatened or coerced by anyone to make it. Petitioner further testified he was satisfied with counsel.

During the allocution, petitioner admitted he purchased gasoline, went to the victim's home and placed the gasoline at the property with the intent to start a fire. In response to being asked on direct examination whether he purposely and knowingly put the residents of the property in danger of death or significant bodily injury, petitioner answered "yes." The court accepted the plea, found petitioner knowingly and voluntarily pled guilty, and noted his satisfaction with counsel.

On November 17, 2019, petitioner was sentenced in accordance with the plea agreement. We affirmed the sentence via written order on direct appeal.¹

Petitioner filed a pro se petition for post-conviction relief, alleging counsel: misrepresented his sentencing exposure; led him to believe he would

¹ Order, 1-2, May 7, 2019. We affirmed the sentence on direct appeal but remanded to the trial court for entry of a corrected judgment of conviction awarding petitioner fourteen additional days of jail credit.

"receive a better outcome" by pleading guilty; "misled" him into his arson guilty plea; failed to review discovery with him; failed to file any motions on his behalf, and finally, failed to investigate his case. Petitioner's amended petition offered one new allegation: that counsel failed to "properly explain the implications of the plea."

The PCR court denied the ineffective assistance of counsel claims. First, it found petitioner's arguments procedurally barred under R. 3:22-4. Second, the court found no evidence to support petitioner's claim that trial counsel was ineffective. Citing petitioner's comprehensive testimony during his plea allocution, the PCR court found petitioner's claims without merit due to their lack of specificity. The PCR court ultimately found that petitioner had failed to meet his burden to show substandard performance by trial counsel, and concluded an evidentiary hearing was not warranted. Petitioner appeals, contending the PCR court erred by finding the PCR claim procedurally barred and by not granting an evidentiary hearing.

II.

We use a de novo standard of review when a PCR court does not conduct an evidentiary hearing. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016) (citing State v. Harris, 181 N.J. 391, 420-21 (2004)). When petitioning

for PCR, a defendant must establish he is entitled to "PCR by a preponderance of the evidence." State v. O'Donnell, 435 N.J. Super. 351, 370 (App. Div. 2014) (citing State v. Preciose, 129 N.J. 451, 459 (1992)).

We analyze ineffective assistance of counsel claims using the two-prong test established by the Supreme Court in Strickland.² See Preciose, 129 N.J. at 459; see also State v. Fritz, 105 N.J. 42, 58 (1987). The first prong of the Strickland test requires a petitioner to establish counsel's performance was deficient. Preciose, 129 N.J. at 463. "The second, and far more difficult, prong of the [Strickland] test is whether there exists 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Id. at 463-64 (quoting Strickland, 466 U.S. at 694).

There exists a strong presumption counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Further, because prejudice is not presumed, a defendant must demonstrate how specific errors by counsel undermined the reliability of the proceeding. State v. Drisco, 355 N.J. Super. 283, 289-90 (App. Div. 2002) (citing United States v. Cronin, 466 U.S. 648, 659 n.26 (1984)).

² Strickland v. Washington, 466 U.S. 668 (1984).

A defendant may not rely on "bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). A court must reject a claim if it rests on allegations that "are too vague, conclusory, or speculative." State v. Porter, 216 N.J. 343, 355 (2013) (quoting State v. Marshall, 148 N.J. 89, 158 (1997)). The petition, therefore, must allege specific facts that are "sufficient to demonstrate counsel's alleged substandard performance." Cummings, 321 N.J. Super. at 170.

III.

Petitioner argues the trial court erred when it found petitioner's claims procedurally barred under R. 3:22-4 and failed to meet the standard for proving ineffective assistance of counsel under Strickland. We first address the procedural bar.

R.3:22-4(a) provides that "[a]ny ground for relief not raised in the proceedings resulting in the conviction, . . . or in any appeal taken in any such proceedings is barred from assertion in a proceeding . . . " for PCR. R. 3:22-4(a); see also State v. Nash, 212 N.J. 518, 546 (2013) (recognizing that R. 3:22-4(a) bars a petitioner from employing a PCR petition to assert a claim that could have been raised at trial or on direct appeal). "[P]etitioners are rarely barred from raising ineffective-assistance-of-counsel claims on [PCR]" under our

jurisprudence, Preciose, 129 N.J. at 459-60, and "[o]ur courts have expressed a general policy against entertaining ineffective-assistance-of-counsel claims on direct appeal because such claims involve allegations and evidence that lie outside the trial record." Id. at 460.

On these facts, we find no reason to deviate from the principle expressed in Preciose, and we conclude the petition for PCR is not precluded by the procedural bar set forth by R. 3:22-4. Petitioner raised sentencing issues on direct appeal, and we cannot discern on this record whether he could have reasonably raised these ineffective assistance of counsel issues at that time. Using the PCR court's R. 3:22-4 analysis, it is not clear whether any ineffectiveness claim would hurdle the procedural bar. We conclude the PCR court committed error when it ordered dismissal of petitioner's application on procedural grounds.

We turn to petitioner's various ineffective assistance of counsel claims. While the PCR court engaged in a mistaken use of R. 3:22-4 to dismiss the petition on procedural grounds, it provided an alternative basis of support for dismissal under Strickland. We affirm the court's dismissal of the petition without a hearing, substantially for the reasons set forth in the judge's Strickland

analysis, which is contained in his written statement of reasons. We add the following brief comments.

The relevant portion of petitioner's plea colloquy indicates the knowing and voluntary nature of his guilty plea:

COURT: Besides what we've talked about here today [petitioner], are there any other promises or representations that have been made to you by me, by the prosecutor, by your attorney by anybody else . . . ?

PETITIONER: No.

. . . .

COURT: All right. You're pleading guilty voluntarily?

PETITIONER: Yes.

COURT: Are you pleading guilty of your own free will?

PETITIONER: Yes.

COURT: Has anyone forced you, threatened you or coerced you to try to make you do something you don't want to do?

PETITIONER: No.

The plea colloquy also revealed petitioner's stated satisfaction with counsel's representation.

COURT: Today you were able to go through this plea form with [trial counsel]?

PETITIONER: Yes.

COURT: Okay. Now [trial counsel] has been your lawyer, right?

PETITIONER: Correct.

COURT: [Have they] been available to you?

PETITIONER: Yes.

COURT: [Have they] answered all your questions?

PETITIONER: Yes.

COURT: Are you satisfied with the legal advice and representation in which [they have] provided to you?

PETITIONER: Yes.

Petitioner failed to provide sufficient and credible evidence which could overcome his own testimony. Although petitioner makes bald assertions that trial counsel failed to review discovery or make any pre-trial motions, petitioner offers no facts "sufficient to demonstrate counsel's alleged substandard performance." Cummings, 321 N.J. Super. at 170. There is a strong presumption that counsel's performance fell within the wide range of reasonable representation. State v. Pierre, 223 N.J. 560, 578-79 (2015). We find petitioner has not met his burden in overcoming that presumption.

In sum, petitioner has failed to draw the required nexus between "specific errors of counsel" he has alleged and any harm to the reliability of his trial. Drisco, 355 N.J. Super. at 290 (citing Cronic, 466 U.S. at 659 n.26). No evidentiary hearing is merited.

To the extent that we have not addressed any remaining arguments by petitioner, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed as to the trial court's reliance on Strickland as grounds for its order dismissing the petition. Reversed as to the trial court's reliance on R. 3:22-4 as grounds for its order dismissing the petition.

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



CLERK OF THE APPELLATE DIVISION