

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1689-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PAUL C. CAMPO,

Defendant-Appellant.

Submitted June 4, 2024 – Decided June 14, 2024

Before Judges Mayer and Whipple.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 10-07-1682.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Richard Sparaco, Designated Counsel, on the briefs).

William E. Reynolds, Atlantic County Prosecutor, attorney for respondent (John J. Santoliquido, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Paul C. Campo appeals from a November 1, 2022 order denying his petition for post-conviction relief (PCR) after an evidentiary hearing. We affirm for the comprehensive and cogent reasons expressed by Judge Kevin T. Smith in his November 1, 2022 written decision.

Defendant was indicted and charged with second-degree luring, N.J.S.A. 2C:13-6 (count one), second-degree sexual assault, N.J.S.A. 2C:14-2(b) (count two), second-degree attempted aggravated sexual assault, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:14-2(a) (count three), third-degree endangering the welfare of a child by sexual conduct, N.J.S.A. 2C:24-4(a) (count four), and fourth-degree endangering the welfare of a child by possession of child pornography, N.J.S.A. 2C:24-4(b) (count five).

After the first day of trial, defendant entered a conditional guilty plea, reserving the right to appeal all pretrial motions. At the plea hearing, defense counsel set forth the plea terms on the record. Defendant's attorney stated the following:

The agreement is essentially this. It's a conditional plea. The plea will be to two counts, count two of the indictment, sexual assault in the second degree, count one of the indictment, luring in the second degree. All remaining counts to be dismissed. . . . The appeal is not waived for any pretrial motions. . . . The actual sentence itself which is called for will be [seven] years

in the New Jersey State Prison subject to NERA¹ on the sexual assault charge . . . consecutive to a flat [six] New Jersey State Prison on the luring charge.

The assistant prosecutor confirmed the plea terms as stated by defense counsel.

The judge handling the plea hearing then addressed defendant regarding the plea. Defendant told the judge he reviewed the plea forms with his attorney prior to initialing each page and understood the terms of the plea agreement. The plea forms signed by defendant included the following handwritten note: "Seven (7) years [] NERA on [c]ount [two], sexual assault[,] consecutive to flat six [] on [c]ount [one][,] [l]uring."

Before accepting the plea, the judge specifically asked defendant the following: "You understand it calls for[,] in terms of the custodial portion[,] [seven] years subject to [NERA] on the sexual assault with a consecutive [six] years on the luring? Do you understand that?" Defendant confirmed his understanding of the sentence. After finding defendant "knowingly, voluntarily, and intelligently" waived his right to trial and "read, signed, and understood the plea form and the [six] pages of supplements," the judge accepted defendant's conditional guilty plea.

¹ No Early Release Act, N.J.S.A. 2C:43-7.2.

Five months later, defendant was sentenced in accordance with the plea agreement.² The judge sentenced defendant to "seven years, subject to [NERA]" on count two. On count one, the judge sentenced defendant to "six years in prison consecutive to the seven years on [c]ount [t]wo." The judge dismissed all remaining counts.

Defendant filed a direct appeal, and we affirmed defendant's conviction and sentence in State v. Campo, No. A-3746-12 (App. Div. May 15, 2015). On direct appeal, defendant did not challenge the imposition of consecutive sentences. The New Jersey Supreme Court denied defendant's petition for certification. State v. Campo, 223 N.J. 164 (2015).

In February 2018, defendant, proceeding pro se, filed a PCR petition. In his petition, defendant alleged he received ineffective assistance of counsel during the plea hearing because his attorney did not argue for concurrent sentences, and failed to provide adequate representation during the plea negotiations and sentencing hearing.

After conducting an evidentiary hearing, Judge Smith denied defendant's PCR petition. In his written decision, the judge explained defendant failed to

² The judge who sentenced defendant was the same judge who handled the plea hearing.

challenge the imposition of consecutive sentences on direct appeal. Additionally, because defendant was no longer in custody at the time of the PCR proceeding, the judge noted defendant remained subject to Megan's Law³ restrictions and registration, and Parole Supervision for Life (PSL).⁴ Therefore, "even if [the court] were to grant [a resentencing] hearing and if the sentencing judge were to impose a different and more favorable sentence, [defendant] [would] not . . . be relieved from correlating sentencing provisions."

Further, Judge Smith explained the plea agreement negotiated by defense counsel "reduced the maximum state prison exposure by nearly [sixty-six percent] and reduced the parole ineligibility period by about [seventy-five percent]." In rejecting defendant's ineffective assistance of counsel claim, Judge Smith found defense counsel "would have gained little in arguing for a lesser sentence than the sentence[] negotiated in the plea agreement."

On appeal, defendant raises the following argument:

TRIAL COUNSEL WAS INEFFECTIVE IN MISLEADING THE DEFENDANT INTO BELIEVING THAT THE SENTENCES HE WOULD RECEIVE IN EXCHANGE FOR HIS GUILTY PLEAS TO TWO COUNTS IN THE INDICTMENT WOULD RUN CONCURRENTLY INSTEAD OF

³ N.J.S.A. 2C:7-1 to -23.

⁴ N.J.S.A. 2C:43-6.4.

CONSECUTIVELY, AND HE WOULD NOT HAVE
PLEADED GUILTY BUT FOR THE ERROR OF
COUNSEL.

Where the PCR judge conducts an evidentiary hearing, as in this case, we apply a deferential standard of review, accepting "the PCR court's factual findings, given its opportunity to hear live witness testimony" and "uphold[ing] the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Gideon, 244 N.J. 538, 551 (2021) (quoting State v. Nash, 212 N.J. 518, 540 (2013)). However, we review a PCR judge's legal conclusions de novo. Nash, 212 N.J. at 540-41.

"A petitioner is generally barred from presenting a claim on PCR that could have been raised at trial or on direct appeal, [Rule] 3:22-4(a), or that has been previously litigated, [Rule] 3:22-5." Nash, 212 N.J. at 546; see also R. 3:22-4(a) and R. 3:22-5. PCR "is not a substitute for direct appeal; nor is it an opportunity to relitigate a case on the merits." State v. Szemple, 247 N.J. 82, 97 (2021).

To establish a prima facie claim of ineffective assistance of counsel, a party "must demonstrate the reasonable likelihood of succeeding under the test

set forth in Strickland v. Washington,⁵ . . . which [the Court] adopted in State v. Fritz.⁶ State v. Preciose, 129 N.J. 451, 463 (1992).

To satisfy the two-prong Strickland/Fritz test, a defendant must "show that counsel's performance was deficient." Gideon, 244 N.J. at 550 (quoting Strickland, 466 U.S. at 687). "Second, the defendant must have been prejudiced by counsel's deficient performance." Ibid. (citing Strickland, 466 U.S. at 687). "The defendant's conviction must be reversed if both prongs of the Strickland standard have been satisfied because, in such cases, 'the ineffective representation constitutes a breakdown in the adversary process that renders the result unreliable.'" Ibid. (quoting Nash, 212 N.J. at 542).

A defendant's right to effective assistance of counsel "extends to the plea-bargaining process." Lafler v. Cooper, 566 U.S. 156, 162 (2012). "[A]n attorney's conduct is incompetent when a plea offer is never communicated by the attorney to the client." State v. Powell, 294 N.J. Super. 557, 564 (App. Div. 1996) (citation omitted).

Having reviewed the record and Judge Smith's detailed written decision, defendant failed to satisfy either Strickland prong to prevail on his ineffective

⁵ 466 U.S. 668 (1984).

⁶ 105 N.J. 42, 58 (1987).

assistance of counsel claim. Defendant elected not to have his trial counsel, who represented defendant during the plea and sentencing hearings, testify at the PCR evidentiary hearing. Instead, defendant relied on his own self-serving testimony that trial counsel "advi[s]e[d] that [he] would spend five years, [eleven months] and [twelve] days in prison overall," causing defendant to accept the plea offer and, but for counsel's advice, he would not have pleaded guilty. Contrary to defendant's self-serving testimony at the PCR evidentiary hearing, the transcripts of the plea and sentencing hearings demonstrated the plea agreement unequivocally imposed consecutive sentences.

Moreover, defendant faced substantial prison time if he proceeded to trial and a jury found him guilty on all counts. The significantly reduced prison exposure as a result of trial counsel's negotiation of an extremely favorable plea agreement, coupled with defendant's failure to challenge the imposition of consecutive sentences on direct appeal, further supported Judge Smith's determination that defendant understood the plea terms and would not have rejected the plea agreement.

Applying the law governing our review, we affirm the denial of defendant's petition for the reasons stated in Judge Smith's detailed and comprehensive written decision. We are satisfied that defense counsel's

performance was not deficient, and defendant failed to sustain his burden under the Strickland test.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION