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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2582-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAREEF WILLIAMS,

Defendant-Appellant.

Submitted April 22, 2024 – Decided May 23, 2024

Before Judges Sabatino and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment Nos. 15-10-2534, 16-04-1138, and 16-04-1139.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Susan Brody, Designated Counsel, on the brief).

Theodore N. Stephens, II, Essex County Prosecutor, attorney for respondent (Braden Couch, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Shareef Williams appeals from the March 21, 2023 order denying his petition for post-conviction relief ("PCR") following an evidentiary hearing. Based on our review of the record and the applicable legal principles, we affirm.

I.

In July 2015, defendant conspired with a co-defendant to sell heroin in Newark. In November 2015, defendant, with the same co-defendant, conspired to rob a gas station in Newark. During the robbery, he brandished an unregistered handgun and was shot in the stomach by a police officer. At the time, he had two prior convictions for robbery and carjacking. Defendant was subsequently charged under three separate indictments with numerous offenses.¹

¹ Indictment No. 15-10-2534 charged defendant with: second-degree conspiracy to possess a controlled dangerous substance ("CDS"), N.J.S.A. 2C:5-2 and 2C:35-10(a) (count one); third-degree possession of heroin, N.J.S.A. 2C:35-10(a) (count two); third-degree possession of heroin with the intent to distribute, N.J.S.A. 2C:35-5(a)(1) and (b)(3) (count three); third-degree possession of heroin with intent to distribute within 1,000 feet of school property, N.J.S.A. 2C:35-7 (count four); second-degree possession of heroin with the intent to distribute within 500 feet of a public park or building, N.J.S.A. 2C:35-7.1 (count five); third-degree distribution of heroin, N.J.S.A. 2C:35-5(a)(1) and (b)(3) (count six); and second-degree conspiracy to distribute heroin while within 500 feet of a public park or building, N.J.S.A. 2C:35-7.1 (count seven).

Defendant ultimately pled guilty, as part of a plea agreement, to: third-degree conspiracy to distribute heroin (count one, Indictment No. 15-10-2534); third-degree possession of heroin with intent to distribute (count three, Indictment No. 15-10-2534); and third-degree distribution of heroin (count six, Indictment No. 15-10-2534); second-degree conspiracy to commit robbery (count one, Indictment No. 16-04-1138); first-degree armed robbery (count two, Indictment No. 16-04-1138); second-degree unlawful possession of a handgun (count four, Indictment No. 16-04-1138); and first-degree unlawful possession of a weapon with a prior conviction (count four, Indictment No. 16-04-1139), subject to the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2. Defendant was sentenced under Indictment No. 16-04-1138 to a term of fifteen years pursuant to NERA to run concurrently with a term of five years with thirty months of parole ineligibility under Indictment No. 15-10-2534, and a flat ten-year term on

Indictment No. 16-04-1138 charged defendant with: second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 (count one); first-degree robbery, N.J.S.A. 2C:15-1 (count two); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count three); and second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count four).

Indictment No. 16-04-1139 charged defendant with: second-degree possession of a weapon by a convicted felon, N.J.S.A. 2C:39-7(b) (count one), and first-degree unlawful possession of a handgun by a person previously convicted of manslaughter, N.J.S.A. 2C:39-5(j) (count two).

Indictment No. 16-04-1139. The remaining counts of the indictments were dismissed.²

In June 2019, defendant filed a pro se PCR petition. Counsel was subsequently assigned and filed a brief on behalf of defendant with the PCR court. The PCR court held an evidentiary hearing in February 2023. Defendant and his prior counsel were the only witnesses to testify.

Defendant testified he believed his trial counsel had been ineffective "because she never discussed [the] case with [him]." Rather, counsel "always discussed [the] case with [him] in numbers." He claims he advised his attorney he wanted to go to trial because "if [h]e would have went to trial, [h]e could have at least raised some doubt." Defendant claims his trial counsel dismissed his questions about potential motion and trial issues and advised him she was working on getting him the best plea offer.

Defendant further testified he felt coerced into pleading guilty. He claims his counsel only briefly met with him two or three times at the county jail. He further stated his counsel only reviewed the video of the robbery with him on one occasion, and he believed the video did not clearly depict a gun in his hand.

² On February 13, 2019, we remanded for the trial court to amend the judgment of conviction on Indictment No. 16-04-1138 to reflect the correct number of jail and gap time credits. Otherwise, the sentence was affirmed.

He conceded, however, that a handgun was found at the scene by police. Defendant testified his conversations with counsel revolved around pleading guilty, and defense counsel's focus was on getting him "the best deal," as opposed to trial strategy.

Defendant's trial counsel testified the video of the robbery "clearly" showed a gun in defendant's hand, and you could see money in his other hand. Moreover, after defendant was shot, he pulled down his mask. She testified that she initially explained the plea offer to defendant, but he did not want to plead guilty. However, after "extensive conversations," defendant changed his mind and wanted to enter a guilty plea. Trial counsel testified she did not force or coerce defendant into pleading guilty. She also stated that although defendant discussed the possibility of filing a Wade³ motion or suppression motion—arguing that the videotape had been altered by the State—she advised defendant that none of those strategies would be successful.

On March 21, 2023, the trial court, as discussed more fully below, denied defendant's PCR petition. This appeal followed.

II.

Defendant raises the following issues on appeal:

³ United States v. Wade, 388 U.S. 218 (1967).

POINT I

THE TRIAL PCR COURT ERRED IN FINDING THAT THE STANDARDS FOR GRANTING THE PETITION HAD NOT BEEN MET.

- A. [Defendant's] Testimony Established that His Attorney Had Been Ineffective in Failing to Take Any Steps to Prepare for Trial, Thus Making It Impossible for Him to Proceed to Trial As He Wished to Do.

- B. [Defendant's] Testimony Established a Reasonable Probability That the Outcome of the Case Would Have Been More Beneficial to Him If He Had Proceeded to Trial.

More specifically, defendant argues his trial counsel "refused to discuss any trial strategy with him and would only talk about plea bargaining." Defendant insists that he told his trial counsel on several occasions he wanted to proceed to trial. He contends he only pled guilty "because his attorney refused to discuss with him the option of proceeding to trial, beyond telling him that none of the issues he wanted to raise would succeed." He claims he believed he had "no choice but to unwillingly enter his guilty pleas." In short, he asserts his defense attorney never planned any defense, and therefore, he was unable to proceed to trial due to the ineffective assistance of counsel.

Defendant next argues his trial counsel's ineffective assistance impacted the outcome of the case because he was pressured into pleading guilty due to his attorney's unprofessional errors. Finally, defendant asserts that if defense counsel had properly prepared, "it is reasonably probable that he would have achieved a more beneficial result, such as perhaps a conviction for second-degree robbery rather than first-degree."

Our review of a PCR claim after a court has held an evidentiary hearing "is necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013). Where an evidentiary hearing has been held, we should not disturb "the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting Nash, 212 N.J. at 540). We review any legal conclusions of the trial court de novo. Nash, 212 N.J. at 540-41; State v. Harris, 181 N.J. 391, 419 (2004). There is a strong presumption counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland v. Washington, 466 U.S. 668, 690 (1984). Further, because prejudice is not presumed, State v. Fritz, 105 N.J. 42, 52 (1987), the defendant must demonstrate "how specific errors of

counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

"[PCR] is New Jersey's analogue to the federal writ of habeas corpus." Pierre, 223 N.J. at 576 (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.'" Nash, 212 N.J. at 540 (quoting State v. McQuaid, 147 N.J. 464, 482 (1997)). A petition for PCR is not a substitute for a direct appeal. State v. Mitchell, 126 N.J. 565, 583-84 (1992) (citing State v. Cerbo, 78 N.J. 595, 605 (1979), and State v. Cacamis, 230 N.J. Super. 1, 5 (App. Div. 1988)).

To establish a prima facie claim of ineffective assistance of counsel, a defendant must show: (1) counsel's performance was deficient; and (2) the deficiency prejudiced the defense. Strickland, 466 U.S. at 687; Fritz, 105 N.J. at 52 (adopting Strickland). Petitioner has the burden of establishing his right to the requested relief by a preponderance of the credible evidence. Mitchell, 126 N.J. at 579.

Here, the PCR court noted defendant's trial counsel, who had been a public defender for thirteen years, testified she met with defendant on several occasions and had extensive conversations with him about the discovery. It noted the State had high-definition video surveillance of the robbery in which defendant's face,

along with a weapon in his hand, was clearly depicted. It further observed the case against defendant was very strong and that he was on parole at the time of the offense. The PCR court noted that it reviewed all of the plea paperwork, and defendant initialed each page of the document, signifying he understood the offer. Defendant never raised any concerns regarding a potential prison term. The PCR court noted that trial counsel "appeared very composed and recalled the details of the case and conversations" she had with defendant. The court further stated counsel did not appear to be deceptive in her responses, and overall the court found her to be "credible."

The PCR court noted defendant conceded his trial counsel visited with him on at least three occasions while he was incarcerated and that she reviewed discovery and the video surveillance footage with him. He further admitted she went over the plea paperwork with him and that he signed the documents. The court noted defendant "attempted to avoid questions asked by the State concerning [his] possession of a firearm," despite the fact he admitted to pleading guilty to unlawful possession of a weapon. "Contrary to his contention that he was coerced into a plea, [defendant] testified that no one promised him an offer outside of the plea paperwork and that he merely hoped for a lesser custodial sentence." The court observed that defendant "made several

inconsistent statements such as alleging . . . trial counsel never discussed [the] case with him," notwithstanding his concession that she met with him and reviewed the discovery. Ultimately, the PCR court found defendant's testimony "inconsistent and not fully reliable" and "not corroborated by the [c]ourt record." In short, the PCR court found defendant's testimony not "fully credible."

The PCR court determined defendant failed to establish either prong of Strickland. It noted defendant made only "vague and conclusory allegations without providing specific instances of substandard conduct by his counsel." It explained he had not provided any affidavits or certifications demonstrating trial counsel's alleged ineffective assistance. In short, the PCR court characterized defendant's testimony as "inconsistent and baseless." While he had hoped for a sentence of twelve years, he admitted his attorney did not promise him that sentence. Therefore, the PCR court concluded his contentions were "merely bald assertions."

Regarding the second prong of Strickland, the PCR court noted defendant claimed his trial counsel made "cumulative errors," but that he failed to demonstrate there was a reasonable probability that the outcome of the case would have been different but for those errors. The PCR court commented defendant did not provide "any corroborative evidence that could change the

outcome of his proceeding[s] because the entire offense was recorded via a high-definition surveillance camera. Therefore, the likelihood of conviction remain[ed] unchanged."


Lastly, the PCR court observed that defendant agreed during the plea colloquy that he was satisfied with the representation by counsel, and he was not promised anything other than a potential fifteen-year sentence. Lastly, the PCR court noted defendant "is merely dissatisfied with counsel's strategy in recommending a guilty plea, which is insufficient to demonstrate ineffective assistance of counsel. [Defendant] failed to show that prior counsel's alleged lack of discussing options other than a plea is what led to his 'excessive' sentence." Accordingly, defendant "failed to meet the burden under the two-prong Strickland standard for ineffective assistance of counsel."

Given the deference we owe to the PCR court following an evidential hearing, we affirm substantially for the reasons set forth in the PCR court's opinion. Defendant essentially challenges the credibility findings made by the PCR court. We determine defendant's arguments are unavailing based on the findings made by the PCR court. The PCR court determined defendant's trial counsel's testimony that she reviewed the discovery with defendant was credible, and that defendant ultimately made an informed, voluntary decision to

enter a plea. We discern no error in the PCR court's determination that trial counsel was not ineffective. Moreover, defendant was captured on high-definition video surveillance robbing a store with a handgun while on parole, and the PCR court determined his likelihood of a conviction remained unchanged despite his allegations. In short, there was ample evidence in the record to support the PCR court's findings as to both prongs of Strickland.

To the extent that we have not addressed any of defendant's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION