

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0672-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AKEL A. ACKIE,

Defendant-Appellant.

Submitted November 15, 2017 – Decided December 7, 2017

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Passaic County, Indictment No.
10-08-0821.

Joseph E. Krakora, Public Defender, attorney
for appellant (Michele A. Adubato, Designated
Counsel, on the brief).

Camelia M. Valdes, Passaic County Prosecutor,
attorney for respondent (Robert J. Wisse,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Akel Ackie appeals from the denial of his post-conviction relief (PCR) petition. Defendant contends the

ineffective assistance of trial counsel caused him to plead guilty. Because we find that defendant has failed to present a prima facie showing of ineffective counsel, we affirm.

Defendant was charged with the murder and sexual assault of his girlfriend's two-year-old daughter after the child died while in his care. Defendant ultimately pled guilty to aggravated manslaughter and endangering the welfare of a child and was sentenced to an aggregate thirty-seven year prison sentence.¹

Prior to the plea allocution, there was a lengthy discussion about a particular legal issue. Defense counsel advised that he had first met defendant a month earlier in court and had subsequently visited him twice in jail.² Defendant agreed that present counsel had "extensively" discussed the legal issue with him on all three prior occasions, in addition to a lengthy conference the morning of the plea hearing. Defendant stated he understood he could have a trial; he chose instead to accept the plea agreement. He was satisfied with the services of his attorneys and advised he was pleading guilty to the specified charges freely and voluntarily.

¹ Defendant only appealed the sentence. We affirmed. State v. Ackie, No. A-1790-13 (App. Div.), certif. denied, 219 N.J. 631 (2014).

² A different public defender represented defendant prior to that time.

At the conclusion of the plea hearing, the trial judge said:

I'm satisfied of several things. First, I think this plea was about as thorough a plea proceeding that I've ever been involved in and all of the requisite bases were covered by all counsel and the Court.

And as a result of his very thorough plea proceeding, I'm satisfied that Mr. Ackie fully understands all of his rights; he's waived all of his rights, including his right to have a trial by jury.

I further find that he fully understands the plea agreement, all of its consequences and all of the sentencing ramifications.

I'm further satisfied that he read the Plea Form, he found all the information contained therein to be true and accurate and as a result he signed and initialed the pages.

I find that he's thinking clearly right now, he's not under the influence of any substance that would cloud his judgment.

I'm satisfied that all of his questions have been answered; that he's been represented by competent counsel; that he's satisfied with the services of his counsel; and that he has no questions for his lawyer or the Court.

I'm further satisfied that he's aware of all of the peripheral sentencing ramifications such as Megan's Law, et cetera.

And, most importantly, I'm satisfied that he has entered his guilty pleas to counts one and five voluntarily, knowingly and because he really is guilty of the two charges he pled guilty to.

And he did provide a more than adequate factual basis to support his pleas. He didn't

just sit and answer all of the questions yes. He supplied much of the factual details as part of his plea. So I believe that the factual basis that was provided is truthful and accurate. So for all those reasons, I'm going to accept this plea.

. . . .

[Counsel], because you inherited this case late; you came in; in a very short period of time you became fully familiar with the case. You had more than adequate meetings with Mr. Ackie. And I think that you deserve the compliments of the Court for the fine work that you did.

In defendant's PCR petition before the trial court, he argued that: (1) he was entitled to withdraw his guilty plea; (2) he was denied effective assistance of counsel; (3) the trial court erred in denying his request for an adjournment prior to his guilty plea; (4) his sentence was unconstitutional; (5) he received ineffective assistance of appellate counsel; (6) he was entitled to an evidentiary hearing; and (7) his petition should not be procedurally barred.

Defense counsel testified at the PCR hearing. He stated that defendant's first public defender was retiring and he agreed to take defendant's case. He met defendant at a prior plea hearing, however the plea did not go through at that time. Counsel said he then met with defendant several times and defendant advised him that he still wanted to take the plea offer. Counsel did not

recall defendant asking him to obtain an adjournment in the case or a discussion about whether there was sufficient time to prepare for trial. Counsel did remember the judge assuring him that if there were to be a trial, he would have the time needed for adequate preparation. Defendant did not seek to retract his plea at any time between the plea hearing and sentencing.

In a lengthy oral decision, the judge informed that he remembered the case "very well." He noted that the evidence against defendant was "monumental," and the State had "an extraordinarily strong case." The judge advised that had defendant been convicted of the murder charge or any of the other serious charges, "he probably would have spent the rest of his natural life in prison." But because the prosecutor wanted to spare the victim's family the pain of a trial and attempt to give them closure, defendant was offered an "extraordinarily favorable . . . plea agreement."

The judge found defense trial counsel "to be very credible" and noted the improbability that the court would not have granted an adjournment of a murder trial under the circumstances of substituting counsel. The judge concluded there was no demonstration of ineffective assistance of counsel.

In considering defendant's request to withdraw his guilty plea, the judge applied the applicable factors under State v.

Slater, 198 N.J. 145 (2009), and found the application meritless, noting that defendant had never asserted a claim of innocence and the favorable plea agreement.

Defendant raises the following points on appeal:

POINT I: PETITIONER WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED UNDER THE UNITED STATES AND NEW JERSEY CONSTITUTIONS IN THE ENTRY OF HIS RETRAXIT PLEA OF GUILTY.

POINT II: THE DENIAL OF THE EFFECTIVE ASSISTANCE OF COUNSEL AT HIS RETRAXIT PLEA MANDATES THAT PETITIONER'S REQUEST TO WITHDRAW HIS GUILTY PLEA BE GRANTED.

We are not persuaded by these arguments. The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-prong test establishing both that: (1) counsel's performance was deficient and he or she made errors that were so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such that there exists a "reasonable probability that, but for counsel's unprofessional

errors, the result of the proceeding would have been different." Strickland, supra, 466 U.S. at 687, 694, 104 S. Ct. at 2064, 2068, 80 L. Ed. 2d at 693, 698.

We are satisfied from our review of the record that defendant failed to demonstrate the ineffectiveness of trial counsel under the Strickland-Fritz test. Defendant's bald assertion that counsel was ineffective for failing to seek an adjournment of the trial date, thus compelling a guilty plea, is without support in the record. To the contrary, defendant received an extremely favorable plea agreement in a case the trial judge termed "virtually defenseless." Defendant has not shown that it would have been rational to reject the plea bargain.

Defendant also argues that the trial judge erred in denying his request to withdraw his guilty plea because his plea was not given voluntarily. We find this argument lacks sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(2), and affirm substantially for the reasons expressed in the trial judge's well-reasoned oral opinion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION