

RECORD IMPOUNDED

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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0855-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

J.W.L.,¹

Defendant-Appellant.

Submitted February 16, 2017 – Decided March 30, 2017

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
11-03-0568.

Joseph E. Krakora, Public Defender, attorney
for appellant (Ruth E. Hunter, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Mary R.
Juliano, Assistant Prosecutor, of counsel and
on the brief; Anthony Puglisi, Legal
Assistant, on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

¹ We use initials to protect the identity of the minor victims.

Defendant appeals from the trial court's May 4, 2015 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

In March 2011, defendant was indicted for fourth-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(5)(b); three counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(5)(a); second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(4); first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1); second-degree sexual assault, N.J.S.A. 2C:14-2(b); third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a); and fourth-degree violation of Community Supervision for Life (CSL), N.J.S.A. 2C:43-6.4(d). These charges were brought after it was discovered defendant had made explicit videos of himself sexually assaulting a child and had shared sexually explicit images of children on his computer.

On May 7, 2012, defendant executed a pretrial memorandum, or plea cut-off form, rejecting the State's final plea offer of twenty years with twenty years of parole ineligibility. On October 26, 2012, after the trial commenced, defendant pled guilty to all counts. The judge sentenced defendant to an aggregate term of imprisonment of twenty-eight years.

We affirmed defendant's conviction and sentence on October 24, 2013. Defendant then filed a petition for PCR on November 12,

2013. Counsel for defendant filed an amended petition in May 2014.

The PCR judge heard oral argument on April 24, 2015, and denied defendant's petition without an evidentiary hearing on May 4, 2015. Defendant moved for reconsideration, which the judge denied. This appeal followed.

Defendant raises the following issues on appeal:

POINT I

THE PCR COURT ERRED IN DENYING AN EVIDENTIARY HEARING BECAUSE DEFENDANT PRESENTED A PRIMA FACIE CASE OF INEFFECTIVE ASSISTANCE OF COUNSEL.

A. DEFENDANT PRESENTED A PRIMA FACIE CASE OF INEFFECTIVENESS UNDER LAFLER V. COOPER, U.S. ___, 132 S. CT. 1376, 1383, 182 L. ED. 2D 398 (2012).

B. DEFENDANT PRESENTED A PRIMA FACIE CASE OF INEFFECTIVENESS UNDER STRICKLAND V. WASHINGTON, 466 U.S. 668, 694, 104 S. CT. 2052, 80 L. ED. 2D 674 (1984).

C. THE RECORD CONTAINED MATERIAL ISSUES OF DISPUTED FACTS.

POINT II

THE PCR COURT'S DECISION SHOULD BE REVERSED BECAUSE IT MISAPPLIED STATE V. O'DONNELL, 435 N.J. SUPER. 351 (APP. DIV. 2014).

In a pro se supplemental brief, defendant raises numerous additional arguments we also address below.

We review the legal conclusions of the PCR court de novo. State v. Harris, 181 N.J. 391, 419 (2004), cert. denied, 545 U.S. 1145, 125 S. Ct. 2973, 162 L. Ed. 2d 898 (2005). We give deference to a trial judge's findings of fact as long as those facts are supported by substantial, credible evidence in the record. State v. Pierre, 223 N.J. 560, 576 (2015).

Defendant argues the PCR judge should have conducted an evidentiary hearing because he established a prima facie case of ineffective assistance of counsel. We reject his argument.

Where no evidentiary hearing has been conducted, a reviewing appellate court may conduct a de novo review of both factual and legal findings of the PCR court. O'Donnell, supra, 435 N.J. Super. at 373 (App. Div. 2014) (citation omitted). The decision not to hold an evidentiary hearing is reviewed for an abuse of discretion. State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013).

A court should hold an evidentiary hearing if a defendant has established a prima facie claim in support of the relief requested. State v. Preciose, 129 N.J. 451, 462 (1992). In order to establish a prima facie case of ineffective assistance of counsel, a defendant must demonstrate the reasonable likelihood his claim will succeed on the merits under the two-pronged test set forth in Strickland, supra, 466 U.S. at 668, 104 S. Ct. at 2052, 80 L. Ed. 2d. at 657, and adopted by our Supreme Court in State v. Fritz,

105 N.J. 42 (1987). Preciose, supra, 129 N.J. at 463.

To satisfy the Strickland test, the defendant must first show his counsel made "errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. Next, the defendant must show he was prejudiced by the deficient performance by establishing the errors were so serious defendant was deprived of a fair trial. Ibid.

Defendant cites Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376, 178 L. Ed. 2d 398 (2012), and argues his counsel was ineffective because he would have accepted the State's original plea offer of twenty years but for counsel's failure to advise him. Defendant then argues he would not have pled guilty during trial but for counsel's ineffectiveness, and he only pled because counsel was unprepared for trial.

The record establishes defendant was aware of the plea offer and rejected it asserting his innocence. Defendant has not provided evidence his counsel's performance was deficient. Defendant's vague assertions his trial counsel was disrespectful to him are not sufficient to prove counsel's performance fell below an objectively reasonable standard of competence. Defendant's certification does not provide specific examples demonstrating trial counsel's lack of preparation. Defendant has

failed to provide adequate evidence trial counsel told him to reject the plea offer or failed to properly advise him on the offer, and thus, defendant's reliance on Lafler is misplaced. Therefore, defendant has not presented prima facie evidence of ineffective assistance of counsel.

Defendant also argues he was entitled to an evidentiary hearing because there were material facts in dispute, see State v. Russo, 333 N.J. Super. 119, 138 (App. Div. 2000), asserting there was a dispute regarding whether trial counsel advised defendant about the twenty year plea offer. However, defendant failed to present sufficient evidence counsel had not adequately advised him. Moreover, the record clearly establishes defendant was aware of the plea offer, and more importantly, the consequences of rejecting it.

A trial judge "has the discretion to evaluate an issue as lacking adequate factual or legal merit." State v. Pyatt, 316 N.J. Super. 46, 51 (App. Div. 1998) (finding a trial judge does not have to hold a hearing for every issue asserted in a petition for PCR). For a claim of ineffective assistance of counsel to entitle a PCR petitioner to an evidentiary hearing, "a petitioner must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Defendant must allege facts

demonstrating "counsel's alleged substandard performance," ibid., and these factual assertions must be supported by affidavit or certification in order for defendant to be entitled to an evidentiary hearing, R. 3:22-10(c). Here, the PCR judge found defendant had not presented adequate evidence to support his claim of ineffective assistance of counsel. Defendant's certification to the court did not contain specific information, and defendant cannot solely rely upon his PCR petition to support his claims. Thus, defendant was not entitled to an evidentiary hearing, and we find no abuse of discretion by the PCR judge.

Additionally, defendant argues the PCR judge misapplied O'Donnell.² The PCR court erroneously stated defendant had to satisfy the standards set forth in both Strickland for ineffective assistance and Slater to withdraw a guilty plea; however, defendant failed to prove he should prevail under either standard. Therefore, the error is of no moment. The PCR judge did not abuse his discretion by denying defendant's request to withdraw his guilty plea. See O'Donnell, supra, 435 N.J. Super. at 372 ("[T]he


² In O'Donnell, we discussed the standard for an ineffective assistance of counsel claim on a petition for PCR and the standard for a motion to withdraw a plea. O'Donnell, supra, 435 N.J. Super. at 369-72. We clarified these standards are distinct and separate but noted the analysis may overlap. Id. at 370. Thus, defendant does not have to satisfy both Strickland and Slater to prevail.

trial court's denial of defendant's request to withdraw his guilty plea will be reversed on appeal only if there was an abuse of discretion which renders the [trial] court's decision clearly erroneous."). As previously discussed above, defendant also failed to satisfy the Strickland standard.

We also note defendant raises multiple arguments in a supplemental pro se brief. Following our review, we conclude there is no issue warranting review because these arguments are not appropriate in a petition for PCR, but should have been raised on direct appeal. See R. 3:22-4(a).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION