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This opinion shall not "constitute precedent or be binding upon any court."
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-1155-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHANIQUA A. PIERRE, a/k/a SHEEK,

Defendant-Appellant.

Submitted October 10, 2017 – Decided November 15, 2017

Before Judges Messano and Accurso.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
11-02-0440.

Joseph E. Krakora, Public Defender, attorney
for appellant (Durrell Wachtler Ciccia,
Designated Counsel, on the brief).

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Jason Magid,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Shaniqua A. Pierre pled guilty to first-degree
aggravated manslaughter, N.J.S.A. 2C:11-4(a). During her colloquy

with the judge, defendant denied taking any drugs or alcohol that might have affected her ability to think clearly that day, evidenced an understanding of her rights and the terms of the plea bargain and indicated she was knowingly and voluntarily pleading guilty.

Defendant filed a pro se request to withdraw her plea prior to sentencing, claiming she suffered from bi-polar disorder and had not taken her medications for some period prior to pleading guilty. Noting that she had some contact with the jail regarding defendant's "psychiatric issue[s]," defense counsel requested an adjournment to review defendant's complete medical records. The judge denied the adjournment, considered the factors enunciated in State v. Slater, 198 N.J. 145, 158-62 (2009), denied defendant's motion to withdraw her guilty plea and sentenced her in accordance with the plea bargain to twenty-five years' imprisonment, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

Our colleagues heard defendant's appeal of her sentence on the Excessive Sentence Oral Argument calendar. They remanded the matter to the trial court to permit defendant to "renew her motion to withdraw her guilty plea . . . with supporting medical records and any other appropriate amplified proofs." State v. Shaniqua A. Pierre, order remanding matter to trial court, No. A-2225-11 (App. Div. Nov. 13, 2012).

On remand, the judge conducted a hearing, at which Dr. Edward J. Dougherty, a forensic psychologist, and defendant testified. Based on his review of defendant's medical records and clinical interview, Dr. Dougherty concluded defendant suffered from bipolar disorder and schizoaffective disorder. Dr. Dougherty opined that defendant would have exhibited observable symptoms of her illness had she not been taking her medication at the time she pled guilty. Defendant testified that although she was given the medication at the jail, she "cheek[ed] it," i.e., kept it in her mouth without swallowing and sold it instead.

The judge did not believe defendant's testimony. He found that although she claimed to have stopped taking her medication, defendant exhibited no decompensating symptoms during the plea allocution, which had been video recorded. He again denied defendant's motion to withdraw her guilty plea and reaffirmed his findings of aggravating and mitigating sentencing factors in support of the sentence imposed.

Defendant did not file a direct appeal, but, instead, filed a pro se petition for post-conviction relief (PCR). She alleged trial counsel provided ineffective assistance (IAC) by failing to psychiatrically evaluate defendant and assert a diminished capacity defense. Defendant claimed that she would not have pled guilty had counsel performed adequately.

PCR counsel was appointed and filed an extensive brief in support of the petition raising other arguments, including trial counsel's failure to file a direct appeal following the remand hearing and trial counsel's concession during the remand hearing that defendant did not assert a "colorable claim of innocence." See Slater, supra, 198 N.J. at 158-59.¹ The PCR judge, who was not the trial judge, granted defendant an evidentiary hearing.

Defendant testified and called Dr. Kenneth Weiss, a forensic psychiatrist, and trial counsel as additional witnesses. Defendant again stated that she never took her medications and sold them inside the jail instead. After her motion to withdraw was denied following remand, she advised her attorney she wanted to appeal. Dr. Weiss concluded that at the time of her guilty plea, defendant's "mental state was impaired to the point that . . . the waiver of rights and the guilty plea, were neither knowing, intelligent nor voluntary."

Trial counsel testified that the State's evidence against defendant was very strong, and she urged defendant to accept the plea bargain. She never sought defendant's medical records until

¹ Apparently, the petition was supported by a certification from trial counsel that is not in the appellate record. However, in her oral decision granting defendant an evidentiary hearing, the PCR judge referenced some of the certification's contents.

defendant filed her pro se motion to withdraw her guilty plea. Counsel thought that was a terrible idea and so advised defendant.

Counsel believed defendant had no "colorable claim of innocence" and acknowledged conceding that point during the remand hearing, arguing instead on remand that defendant's guilty plea was not voluntarily given. Counsel did not recall Dr. Daugherty's testimony, but she claimed our remand order required defendant "do something" by way of further medical proof or withdraw the application. Defendant refused to withdraw her motion to retract her guilty plea. In the end, counsel was not "excited about bringing [Dr. Daugherty] before the court." Lastly, counsel acknowledged that she did not file a direct appeal following the remand, but stated defendant never asked her to do so.

In a thorough oral opinion, the PCR judge found defendant and Dr. Weiss were not credible witnesses. The judge also found trial counsel was credible. Based upon her review of defendant's guilty plea, the judge concluded defendant voluntarily and knowingly pled guilty. The judge conducted her own analysis of the Slater factors and rejected any claim that defendant should be permitted to withdraw her guilty plea or that trial counsel's performance was deficient.

Before us, defendant raises a single point:

THE LOWER COURT ERRED IN DENYING DEFENDANT'S
REQUEST TO WITHDRAW HER PLEA BARGAIN

Having considered the argument, we affirm.

Although defendant continues to assert an IAC claim, she fails to explain exactly how trial counsel was deficient. Rather, defendant's complete legal argument is as follows:

It was an abuse of discretion for the lower court to discard the opinion of the medical expert. Dr. Weiss opined that, to a reasonable degree of psychiatric certainty, [defendant] was not acting in a knowing and voluntary manner at the time of her plea and should have been able to retract her plea. Based on the doctor's opinion, the lower court should have withdrawn the plea and granted [defendant] a jury trial.

There are several reasons why this argument lacks sufficient merit to warrant extensive discussion. R. 2:11-3(e)(2).

Defendant's challenge to the denial of her motion to withdraw her guilty plea following the remand hearing was never raised on direct appeal, even though it could have been. It is, therefore, barred by Rule 3:22-4 (generally barring PCR relief on a "ground . . . not previously asserted" unless the claim "could not have been raised in any prior proceeding" or "enforcement of the bar . . . would result in [a] fundamental injustice").

Defendant would be entitled to relief from this procedural bar if trial counsel provided ineffective assistance by not filing

an appeal when requested. See State v. Perkins, 449 N.J. Super. 309, 311 (App. Div. 2017) ("[T]rial counsel's failure to file a direct appeal when requested by the defendant is presumed prejudicial and constitutes ineffective assistance of counsel" permitting a defendant to file a direct appeal out of time). Here, however, the PCR judge found as a fact defendant never asked trial counsel to file an appeal after the denial of her motion to withdraw her guilty plea following remand.

Most importantly, even if, for example, we considered Dr. Weiss's report as newly discovered evidence making the argument cognizable at this point, the PCR judge carefully detailed the reasons why she rejected Dr. Weiss's opinion. "We defer to the findings of the PCR court in weighing witness testimony when those findings are supported by sufficient credible evidence in the record." State v. Nash, 212 N.J. 518, 553 (2013). That was the case here.

Affirmed.

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


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