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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1288-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAMAR WOODSON,

Defendant-Appellant.

Submitted November 29, 2017 – Decided December 20, 2017

Before Judges Nugent and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
12-12-2104.

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

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Stephanie Davis
Elson, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant appeals the denial of his petition for post-conviction relief (PCR) following an evidentiary hearing. He

alleges his attorney misrepresented that he would be admitted into the drug court program if he pled guilty to robbery. During the PCR hearing, defendant testified he would not have pled guilty if his attorney had not made the misrepresentation. The judge who presided over the PCR hearing denied the petition after determining defendant had neither provided credible testimony nor carried his burden of proving his attorney was ineffective.

On appeal, defendant raises a single point:

POINT I

THE DENIAL OF DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF ON THE GROUNDS HE WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WAS ERROR.

The evidence on the motion record amply supports the judge's decision. Accordingly, we affirm.

Charged in a single-count indictment with second-degree robbery, N.J.S.A. 2C:15-1(a)(2), and facing an extended prison term of up to twenty years subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, defendant accepted a plea offer from the State. In exchange for defendant's plea to second-degree robbery, the State agreed to waive its right to seek an extended term and instead recommend a ten-year prison term subject to NERA. During the plea proceeding, the judge informed defendant if the circumstances of the robbery and defendant's record were as

represented by counsel, he would sentence defendant to an eight-year prison term subject to NERA.

Defendant pled guilty to second-degree robbery. Before doing so, he and his attorney completed a "New Jersey Judiciary Plea Form" and a "Supplemental Plea Form for [NERA] Cases." On the New Jersey Judiciary Plea Form, in response to the directive to "[l]ist any other promises or representations that have been made by you, the prosecutor, your defense attorney, or anyone else as a part of this plea of guilty[,]" defendant listed nothing.

During the plea colloquy, defendant acknowledged these facts: he and his attorney answered all the questions on the forms; he placed his initials at the bottom of each page; and his attorney reviewed all of the questions with him. Nothing on the plea forms referred to drug court.

After questioning defendant about answering the plea forms, the judge repeated that if everything were as counsel represented, she would sentence defendant to eight years subject to NERA, which meant he would have to serve a minimum of six years, nine months, and twenty-two days without parole, and, upon release, he would serve a three-year term of parole supervision.

The judge asked defendant if, other than the representations placed on the record and those contained in plea form, anyone had

made any promises or representations to him to get him to plead guilty. He responded, "[n]o."

When asked to give the factual basis for his plea, defendant admitted that on August 2, 2012, near Bergen Avenue and Academy Street in Jersey City, he saw an elderly woman walking with a child. The child was wearing a gold necklace. Defendant grabbed the necklace and forcibly popped it off the child's neck, intending to keep it and sell it. A bystander, who witnessed the crime, apprehended defendant, and the police arrested him.

Following defendant's guilty plea, the State filed a motion to disqualify defendant's attorney. The attorney consented, and the court granted the State's motion.

Thereafter, defendant applied for admission into the drug court program, and the State objected. The State argued the circumstances of the robbery defendant committed – tearing a chain off the neck of a three-year-old child walking with her grandmother – and defendant's prior record demonstrated he presented a danger to the community. In rejecting defendant's application, the judge who heard the motion noted defendant used enough force to tear the child's shirt and cause injuries to her neck. The judge also noted defendant posed a threat to the grandmother, who tried to shield her granddaughter from defendant. Based on these facts and defendant's prior record, the judge determined defendant posed a

significant danger to the community and, therefore, rejected his application for admission into the drug court program.

Defendant subsequently filed a motion to withdraw his guilty plea. He alleged the attorney who represented him when he pled guilty induced the guilty plea by representing defendant "would be sentenced to the Community Re-Integration Program and be able to avail himself to a drug treatment program rather than serve the recommended state prison sentence." Defendant asserted that once he realized the court would not sentence him to such a program, he informed the court he wished to withdraw his plea. Defendant also claimed his first attorney did not advise him of potential defenses. The judge who had presided over the plea proceeding denied defendant's motion to withdraw his plea and sentenced him to an eight-year prison term subject to NERA.

Defendant appealed his sentence. On a sentencing calendar, we affirmed the sentence as well as the denial of defendant's application for drug court. State v. Woodson, No. A-3548-13 (App. Div. Oct. 1, 2014). A year later, defendant filed the PCR petition that is the subject of this appeal.

Defendant argued in his petition his first attorney failed to properly inform him of a diminished capacity defense due to drug use, failed to argue the sentencing judge double counted aggravating factors, and failed to argue certain mitigating

factors at sentencing. In addition, defendant filed a certification in which he alleged the same attorney told him he could enter a drug program as opposed to serving the prison sentence discussed in the plea colloquy. Defendant also supplemented his original petition with a claim he had used insufficient force in committing the robbery to trigger NERA. A judge granted defendant an evidentiary hearing on the issue of whether his attorney told him he could go into the drug court program rather than serve a prison sentence.

Defendant was the only witness to testify at the PCR hearing. The attorney who had represented him at his plea hearing had closed his practice, retired, and moved from New Jersey. He could not be located.

Defendant testified he retained his attorney by telephone, but met with him in person in a Hudson County court room. He and his attorney spoke in the jury room, and then his attorney entered his appearance. According to defendant, he met with his attorney twice, both in a jury room in a Hudson County court room.¹ When they first met in person, the attorney said he would get defendant a "three flat," because "this is not really that big of an issue."

¹ It is unclear from the transcript whether defendant met with his attorney two or three times. Defendant states he met with his attorney twice in the courthouse and alludes to another meeting in the county jail.

However, when counsel came to see defendant "in the county the one time," counsel explained that because the incident involved a child, the State wasn't "coming off of this."

Defendant said the next time he appeared in court, his attorney told him the State would not come off their agreement to recommend a ten-year prison term subject to NERA. The attorney further represented he "did get [the State] to do a [d]rug [c]ourt." The attorney explained defendant would still have a "ten with [eighty-five] over [his] head if [he doesn't] complete [d]rug [c]ourt." Defendant responded, "all right." The attorney also said none of the time defendant spent in drug court would count toward his sentence. Only the time defendant spent in county jail awaiting trial would count toward the sentence. According to defendant, he decided to accept the plea based on the attorney's representation that he could do drug court. But for that representation, he would have rejected the plea and gone to trial.

Defendant acknowledged reviewing the plea forms with his attorney, but could not recall if the forms made any reference to drug court. Defendant claimed that while he and his attorney were in court going over the procedure for the plea, defendant stopped the procedure and asked the attorney, "what's going on with [the] [d]rug [c]ourt?" Defendant was concerned because he was not hearing anyone mention drug court. Defendant claims his attorney

said not to worry, it was simply part of the procedure that the court ask him a series of questions and they "get all the paperwork straightened out[.]" Defendant claims "[t]hat's when I decided to fire him, right then and there. And that's when my plea was taken back because that's not what I agreed to. What I agreed to was a ten with an [eighty-five] over my head with the [d]rug [c]ourt."

Defendant recalled appearing in court on one occasion when he was between attorneys, and unrepresented. Thereafter, with the assistance of new counsel, he filed an application for drug court and a motion to withdraw his plea. Both were unsuccessful. Defendant insisted that but for the promise of drug court, he would not have pled guilty and he would have gone to trial.

During cross-examination, defendant recalled the judge asking him if any promises had been made other than those placed on the record. He recalled the judge asking him that question and claimed he responded "no" because that's what his attorney told him to say.

Following defendant's testimony, Judge Martha T. Royster denied defendant's PCR petition. Judge Royster noted that prior to defendant's plea colloquy, defendant had not submitted a drug court application. During the plea proceeding, the trial judge

did not mention drug court. Moreover, nothing in the plea forms or colloquy included information on drug court.

Judge Royster further noted that the record of the plea proceeding did not include any indication defendant interrupted the proceeding, questioned his attorney, or otherwise communicated he was unwilling to go forward with the plea without a promise concerning drug court. In fact, when specifically asked about any other promises made to defendant regarding the plea deal, defendant did not mention drug court.

Judge Royster found significant that defendant chose to plead guilty on the day of trial, rather than risk facing a prison sentence of up to twenty-five years. Defendant made that decision in the face of overwhelming evidence. He had no witnesses and no alibi. Judge Royster also found it unlikely defendant's attorney would have discussed the possibility of drug court with defendant prior to the plea, because it appeared defendant was not a viable candidate for drug court based on his criminal history, the nature of the offense, and defendant's eligibility for an extended prison term.

Furthermore, Judge Royster found defendant's testimony lacking in credibility. Defendant claimed he fired his attorney based on the misrepresentation concerning drug court, but the record reflected the court removed defendant's attorney at the

request of the prosecutor. Defendant claimed he filed a motion to withdraw his guilty plea because he discovered he was ineligible for drug court, but in the original motion he claimed his attorney told him he would be eligible to be sentenced to a Community Reintegration Program where he could avail himself of a drug program. The judge reiterated that defendant's silence about drug court at the plea proceeding, particularly in view of the State seeking a ten-year term and the trial judge repeatedly saying she would likely sentence defendant to an eight-year prison term, undermined his credibility.

Having considered Judge Royster's comprehensive and thoughtful opinion under our standard of review, we find no basis for vacating her order denying defendant's PCR petition. We agree defendant has failed to sustain his burden of proving his plea counsel was ineffective.

To prove ineffective assistance of counsel, a defendant must demonstrate two things: first, "counsel's performance was deficient[,]" that is, "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment["]; second, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); accord, State v. Fritz, 105 N.J.

42, 58 (1987). The burden at a PCR hearing "is on the petitioner to establish [the] right to 'relief by a preponderance of the credible evidence.'" State v. Nash, 212 N.J. 518, 541 (2013) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)).

To sustain this burden, a defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992). In other words, a defendant "must do more than make bald assertions that he was denied the effective assistance of counsel. He must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999).


"Our standard of review is necessarily deferential to a PCR court's factual findings based on its review of live witness testimony." Nash, 212 N.J. at 540. For that reason, "we will uphold the PCR court's findings that are supported by sufficient credible evidence in the record." Ibid. (citing State v. Harris, 181 N.J. 391, 415, (2004); State v. Elders, 192 N.J. 224, 244 (2007)).

Here, sufficient credible evidence in the record supports Judge Royster's factual findings and credibility determinations. The timing of defendant's plea, the sentence he faced if he went to trial, the participants' discussions during the plea

proceeding, and defendant's assertions in his motion to withdraw his plea all undermined the accusations he made about his plea counsel in his PCR petition, which he filed more than one and one-half years after his plea. The nature and number of defendant's prior inconsistent statements, as well as the strong circumstantial evidence that stood in stark contrast to defendant's assertions in his PCR petition and at the hearing, provided ample credible evidence in the record to support the judge's findings. Defendant's arguments to the contrary are devoid of merit.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION