SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1483-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM BOSTON,

Defendant-Appellant.

Submitted November 8, 2017 – Decided December 4, 2017

Before Judges Hoffman, Gilson and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Cumberland County, Indictment No. 04-10-0985.

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

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

PER CURIAM

Defendant William Boston appeals from the May 27, 2015 Law Division order denying his petition for post-conviction relief (PCR). We affirm.

The case arose from the fatal stabbing and strangulation of R.W. on the evening of July 30, 2002.[1] We outlined the relevant facts, and the issues defendant raised on appeal, in our prior opinion affirming defendant's convictions for first-degree murder, N.J.S.A. 2C:11-3a(1)-(2); first-degree felony murder, N.J.S.A. 2C:11-3a(3); second-degree burglary, N.J.S.A. 2C:18-2; third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4d; second-degree conspiracy to commit murder, N.J.S.A. 2C:5-2 and 2C:11-3a(1)-(2); and third-degree conspiracy to commit burglary, N.J.S.A. 2C:5-2 and 2C:18-2. See State v. Boston, No. A-4129-07 (App. Div. Aug. 21, 2012), certif. denied, 213 N.J. 568 (2013). After merger, the trial court sentenced defendant to fifty-five years of imprisonment for the murder conviction, and concurrent sentences on his remaining convictions. Id. at 2.

[1] The State's medical examiner determined the victim's jugular vein was severed, and she was also strangled. He opined that "the strangulation and severance of the jugular vein were two 'competing' and 'virtually simultaneous' causes of . . . death." Boston, supra, No. A-4129-07, slip op. at 6-7.

On defendant's direct appeal, we rejected his arguments regarding: 1) the inadmissibility of statements to the police based upon his claimed lack of competence to knowingly and intelligently waive his Miranda[2] rights; 2) the trial court's refusal to re-open his Miranda hearing, failure to allow him to present a complete defense, denial of his right to confrontation, admission of improper hearsay, and imposition of an excessive sentence; and 3) prosecutorial impropriety. Id. at 2-5.

On March 4, 2013, defendant filed a pro se PCR petition, and PCR counsel filed a brief in support of the petition. On May 19, 2015, the PCR judge heard oral argument, and on May 27, 2015, the court denied defendant's application in a written opinion, without an evidentiary hearing. On December 9, 2015, defendant filed a notice of appeal.

Defendant raises the following issues on this appeal:

POINT I

> THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR [PCR], IN PART, UPON PROCEDURAL GROUNDS PURSUANT TO RULE 3:22-12(A)(1).

POINT II

> THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR [PCR] WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY

[2] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

ADDRESS HIS CONTENTION THAT HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL AS A RESULT OF COUNSELS' FAILURE TO UTILIZE RELEVANT PSYCHIATRIC[,] PSYCHOLOGICAL[,] AND MEDICAL TESTIMONY DURING THE MIRANDA HEARING.

POINT III

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR [PCR], IN PART, ON PROCEDURAL GROUNDS PURSUANT TO RULE 3:22-5.

Based on our review of the record and the applicable law, we conclude these arguments lack sufficient merit to warrant extended discussion. R. 2:11-3(e)(2). We affirm substantially for the reasons set forth by Judge Robert G. Malestein in his cogent written opinion. We add the following comments.

To establish a prima facie case of ineffective assistance of counsel, defendant must satisfy the two-prong test articulated in Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984), which our Supreme Court adopted in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show . . . counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Fritz, supra, 105 N.J. at 52 (quoting Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693). Defendant must then show counsel's deficient performance prejudiced the defense. Ibid. To show prejudice, defendant must

establish by "a reasonable probability" that the deficient performance "materially contributed to defendant's conviction . . . . " Id. at 58.

Rule 3:22-5 provides "a prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding . . . ." Thus, this standard's application requires the "[p]reclusion of consideration of an argument presented in [PCR] proceedings . . . if the issue raised is identical or substantially equivalent to that adjudicated previously on direct appeal." State v. Marshall, 173 N.J. 343, 351 (2002) (citation omitted).

Defendant's ineffective assistance of counsel assertion attempts to re-litigate arguments he raised on direct appeal; to wit, he argued the trial court erred in rejecting his motion to suppress his statements because they were not knowing and voluntary, and the corresponding motion to re-open consideration of the Miranda issue. On defendant's direct appeal, we rejected his arguments challenging his Miranda waiver. Boston, supra, slip op. at 22-30. These claims are substantially equivalent to the claims he asserts in this appeal, and thus are barred by Rule 3:22-5. PCR is not another avenue for defendant to submit the

same arguments he asserted on direct appeal. See State v. McQuaid, 147 N.J. 464, 484 (1997).

In his PCR petition, defendant claims his attorney provided ineffective assistance by failing to present psychological, psychiatric, and medical evaluations at his Miranda hearing. The record does not support the claim that defendant's trial counsel was deficient. Regardless, even if counsel was deficient in failing to present the expert testimony at the Miranda hearing, defendant could not show prejudice, i.e. "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 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698; see also State v. L.A., 433 N.J. Super. 1, 14 (App. Div. 2013).

Moreover, defendant's petition is time-barred. See R. 3:22-12(a)(1). Defendant was sentenced on August 3, 2007, and his PCR petition was filed on March 4, 2013. Thus, the petition was filed out of time. We agree with Judge Malestein that defendant demonstrates neither excusable neglect nor a fundamental injustice resulting from upholding the time-bar. Notably, counsel represented defendant on his direct appeal.

Defendant further contends the PCR court erred by ruling on his petition without an evidentiary hearing. However, this matter did not require a hearing because defendant failed to present a

prima facie case of ineffective assistance of counsel. See State v. Porter, 216 N.J. 343, 354 (2013) (citing State v. Preciose, 129 N.J. 451, 462-63 (1992)); R. 3:22-10(b).

Affirmed.