SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3134-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EUGENE FARRELL,

Defendant-Appellant.

Submitted July 25, 2017 – Decided December 26, 2017

Before Judges Ostrer and Leone.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 12-10-2144.

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

Joseph D. Coronato, Ocean County Prosecutor, attorney for respondent (Samuel Marzarella, Supervising Assistant Prosecutor, of counsel; William Kyle Meighan, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Eugene Farrell appeals the denial, without an evidentiary hearing, of his petition for post-conviction relief.

Defendant collaterally challenges his conviction, after a guilty plea, to fourth-degree violating community supervision for life (CSL) by possessing alcohol. The two-count indictment charged that defendant (1) failed to refrain from contacting, or attempted to contact, a minor; and (2) possessed or consumed alcohol. Defendant admitted to the latter. The court sentenced defendant to one year in prison, and ordered a psychological evaluation and defendant's compliance with any recommendations.

Defendant presents the following points for our consideration:

> THE PCR COURT ERRED IN DENYING MR. FARRELL'S PETITION FOR POST-CONVICTION RELIEF WITHOUT AN EVIDENTIARY HEARING.
>
> A. Civil commitment as a consequence of the guilty plea.
>
> B. The de minimis motion

In essence, defendant contends that as a result of his guilty plea, he was civilly committed under the Sexually Violent Predator Act, upon the State's application. He claimed his plea attorney was ineffective by failing to inform him of those consequences, and, had he been informed, he would not have pleaded guilty. He also contended that his attorney was ineffective by failing to seek dismissal of the indictment, on de minimis grounds.

Judge James M. Blaney denied the petition. In a cogent written opinion, the judge concluded that defendant failed to meet the Strickland requirement of showing deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687 (1984). We affirm, substantially for the reasons set forth by Judge Blaney.

Defendant was sentenced to CSL in 2001 (along with a fifteen-year prison term) because he committed a first-degree aggravated sexual assault on a child under thirteen years of age. As for his CSL violation, defendant admitted to his parole officer that he babysat a ten-year old boy, and was briefly alone with him in his room at the motel where he worked. The boy was a child of a motel housekeeper. Defendant also admitted to the parole officer that he had consumed and possessed alcoholic beverages in his room.

Judge Blaney concluded that these CSL violations were far from trivial, and any motion to dismiss on de minimis grounds would have failed. We agree.

Defendant does not specifically tie his argument to one of the three grounds for a de minimis motion under N.J.S.A. 2C:2-11(b). However, we discern no ground for prevailing on any of them. An assignment judge may dismiss a prosecution if the conduct "[d]id not actually cause or threaten the harm or evil" that the statute was designed to prevent, "or did so only to an extent too

trivial to warrant the condemnation of conviction." N.J.S.A. 2C:2-11(b). Assuming defendant's guilt, see State v. Zarrilli, 216 N.J. Super. 231, 236 (Law Div.), aff'd o.b., 220 N.J. Super. 517 (App. Div. 1987), and taking into account defendant's prior criminal history, see State v. Evans, 340 N.J. Super. 244, 253 (App. Div. 2001), defendant's violations posed a "risk of harm to society," which is the "most important" consideration in a triviality analysis under subsection (b), see ibid.

Furthermore, defendant's claim that a fellow worker asked him to watch her child, and that he had an alcohol problem, did not present extenuating circumstances that "cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense." N.J.S.A. 2C:2—11(c). Nor was defendant's violation "within a customary license or tolerance." N.J.S.A. 2C:2-11(a). In sum, defendant would have failed to persuade a court that his CSL violation was de minimis. Therefore, his plea counsel was not ineffective not to file a meritless motion. State v. O'Neal, 190 N.J. 601, 619 (2007).

Judge Blaney also rejected defendant's contention that his plea attorney was ineffective by failing to advise him that his plea could result in his civil commitment as a sexually violent predator. The court concluded that defendant failed to establish a causal connection between his plea to violating CSL, and his

civil commitment. Notably, the court gave PCR counsel an opportunity to marshal such proofs, including reviewing the psychological or psychiatric report that may have been prepared in compliance with defendant's sentence. Yet, PCR counsel was unable to produce any evidence of a causal connection.

Judge Blaney recognized that a trial court is obliged to ensure that a defendant who pleads to a predicate offense under the Sexually Violent Predator Act "understands that as a result of his or her plea, there is a possibility of future commitment and that such commitment may be for an indefinite period, up to and including lifetime commitment." State v. Bellamy, 178 N.J. 127, 139-40 (2003). We need not address whether a defense attorney is also obliged to inform his or her client of that possibility, because violation of CSL is not a predicate offense. N.J.S.A. 30:4-27.26(a). Thus, defendant has not presented a prima facie case of ineffectiveness.

Affirmed.