

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3673-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HUGO SANDOVAL,

Defendant-Appellant.

Submitted March 30, 2017 – Decided May 3, 2017

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
12-05-1283.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alan I. Smith, Designated
Counsel, on the brief).

Diane M. Ruberton, Acting Atlantic County
Prosecutor, attorney for respondent (Courtney
M. Cittadini, Special Deputy Attorney General/
Acting Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Hugo Sandoval appeals from an October 9, 2015 Law Division order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

On May 30, 2012, an Atlantic County grand jury returned an indictment, charging defendant with first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a) (count one); second-degree sexual assault, N.J.S.A. 2C:14-2(b) (count two); and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a) (count three). The charges stemmed from an incident on April 10, 2012, when defendant, a school bus driver, sexually assaulted K.K., an eight-year-old girl.

According to defendant's presentence report, K.K. told her mother that during the bus ride home from school, defendant pulled the bus over and licked her private area. K.K.'s mother contacted the Hammonton Police Department to report this incident, and Police interviewed defendant on April 12, 2012. After receiving Miranda¹ warnings and signing a Miranda waiver form, defendant admitted he pulled down K.K.'s pants and kissed her on the genital area.

On December 6, 2012, defendant pled guilty to count two of the indictment, sexual assault, before Judge Bernard DeLury, Jr. The State agreed to recommend a ten year term of imprisonment,

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

subject to the eighty-five percent period of parole ineligibility imposed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and the registration and notification requirements of Megan's Law, N.J.S.A. 2C:7-1 to -23.

According to the evaluation conducted by the Adult Diagnostic and Treatment Center, defendant's "English language skills are limited." As such, at the beginning of the plea hearing, Judge DeLury asked defendant whether he understood the English language. Defendant affirmed he understood. The judge also told defendant to let him know if he had difficulty understanding the proceedings, and he would take the time to explain or arrange for an interpreter. Defendant acknowledged he understood this instruction.

The judge then informed defendant his guilty plea could result in his future deportation. Defendant said he understood this consequence. Defendant also acknowledged he reviewed the plea forms with his attorney, which he signed. Last, the judge reviewed the consequences relating to NERA, parole supervision, and Megan's Law. Defendant stated he understood each consequence.

On April 12, 2013, Judge DeLury sentenced defendant consistent with the plea agreement. Defendant did not file a direct appeal.

On August 22, 2014, defendant filed a pro se petition for PCR, alleging his plea counsel was ineffective. Defendant also filed a pro se letter brief, and his assigned PCR counsel filed a separate brief. Defendant argued, in relevant part, that his plea counsel was ineffective because counsel failed to provide a Spanish interpreter during the plea hearing and his conferences with defendant. Defendant further asserted counsel failed to advise him he would be subject to the various conditions imposed by NERA and Megan's law, to inform him of the possible deportation consequences of his plea, and to file a motion to suppress his statement to police.

After hearing oral argument, Judge DeLury issued a written opinion dated October 9, 2015, in which he analyzed and rejected defendant's arguments. The judge found defendant's interpreter argument lacked merit, noting defendant stated at the plea hearing that he understood English, and he understood that he could request an interpreter. He also rejected defendant's argument that he lacked an interpreter during communications with counsel, noting defendant acknowledged he understood the plea forms and never alleged a language barrier.

The judge further concluded defendant understood the consequences of his guilty plea with regard to Megan's Law, parole supervision, and his immigration status. The judge relied on the

plea record, which showed the court reviewed these issues with defendant, and defendant stated he understood. Finally, Judge DeLury rejected defendant's argument trial counsel should have moved to suppress his statements to police because, as a native Spanish speaker, he did not understand the Miranda warnings. The judge determined that suppression motions fall "within the purview of trial strategy," but even if counsel had filed a motion, it would have been meritless because the Miranda card was printed in both English and Spanish.

Based on these findings, Judge DeLury concluded defendant failed to establish a prima facie claim for ineffective assistance of counsel. As such, he determined an evidentiary hearing was unnecessary and denied defendant relief.

This appeal followed. On appeal, defendant presents the following arguments:

POINT I

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED AND THE MATTER REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE STRICKLAND TEST.

POINT II

THE COURT'S RULING DENYING POST-CONVICTION RELIEF VIOLATED DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

When a defendant raises a claim for ineffective assistance of counsel, the PCR judge should grant an evidentiary hearing "if [the] defendant has presented a prima facie claim in support of post-conviction relief." State v. Preciose, 129 N.J. 451, 462 (1992). "To establish such a prima facie case, the defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89, 158, cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997). The judge "should view the facts in the light most favorable to the defendant." State v. Jones, 219 N.J. 298, 311 (2014). We review the decision of the PCR judge to forgo an evidentiary hearing de novo. State v. Harris, 181 N.J. 391, 421 (2004), cert. denied, 545 U.S. 1145, 125 S. Ct. 2973, 162 L. Ed. 2d 898 (2005).

To show ineffective assistance of counsel, a defendant must meet the two-prong test set forth by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), which our Supreme Court adopted in State v. Fritz, 105 N.J. 42, 58 (1987). "The defendant must demonstrate first that counsel's performance was deficient, i.e., that 'counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.'"

State v. Parker, 212 N.J. 269, 279 (2012) (quoting Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693).

"Second, the defendant must show that the deficient performance prejudiced the defense." Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. This requires the defendant to demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698.

We apply a similar standard when the defendant's ineffective assistance claim involves a guilty plea. In such circumstances, the defendant must show "(i) counsel's assistance was not 'within the range of competence demanded of attorneys in criminal cases'; and (ii) 'that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial.'" State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).

After carefully reviewing the record, we affirm for substantially the same reasons set forth in Judge DeLury's comprehensive and well-reasoned written decision. We are persuaded defendant failed to make a prima facie showing of

ineffectiveness of trial counsel within the standards of Strickland and Nuñez-Valdéz.

To the extent any argument raised by defendant is not explicitly addressed in this opinion, it is because we are satisfied the argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION