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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4090-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CAMILE LAMAR WILLIAMS,

Defendant-Appellant.

Submitted February 6, 2017 – Decided February 27, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
06-11-2028.

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

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Lillian Kaye,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Camile Williams appeals from a January 28, 2015
order denying his petition for post-conviction relief (PCR). He
argues his trial counsel misinformed him that testimony he gave

at a codefendant's trial was inadmissible at his trial, advice defendant claims he relied on in rejecting a plea. Defendant also alleges trial counsel was ineffective for failing to prepare him to testify at his trial. For the reasons that follow, we affirm.

In November 2006, a Hudson County grand jury returned a 111-count indictment against defendant and five codefendants. The indictment charged defendant with twenty-seven counts of first-degree robbery, N.J.S.A. 2C:15-1; seven counts of second-degree conspiracy to commit armed robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2; three counts of fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(4); one count of second-degree attempted armed robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-1; and fifty-eight weapons offenses.

On March 26, 2007, four months after the grand jury returned the indictment, defendant accepted a plea offer. He pled guilty to seven counts of armed robbery and agreed to testify truthfully at his codefendants' trials. In exchange, the State agreed to recommend an aggregate fifteen-year custodial sentence with an eighty-five percent period of parole ineligibility.

Thereafter, defendant testified at the trial of codefendant Bradley Burgess. Defendant disavowed the statement he gave to police implicating Burgess in the armed robbery for which Burgess was on trial. Defendant testified Burgess was not involved in the

robbery.¹ During his testimony, defendant admitted his role in the robbery for which Burgess was on trial, as well as his role in other robberies.

Following Burgess' trial, the State moved to vacate defendant's guilty plea. A new attorney – the attorney defendant now claims was ineffective – represented defendant at the hearing on the State's motion. During the hearing, defense counsel had defendant confirm her advice that if the plea were vacated, the case would proceed to trial. Defendant acknowledged he had been so informed. Defense counsel continued:

[Defense counsel]: And you're also aware that you did come to court and testify at the trial in the matter of State v. Bradley Burgess, correct?

[Defendant]: Yes.

[Defense counsel]: And it's my understanding that at that time you also made statements that may implicate yourself, correct?

[Defendant]: Yes.

[Defense counsel]: And you're aware that if your case goes to trial, the State may be able to use those statements that you made?

¹ Before the Burgess trial, defendant had prepared a written statement disavowing the statement he gave to the police implicating Burgess. At a hearing out of the presence of the jury, during questioning by counsel for Burgess, defendant acknowledged that he had prepared the written statement exonerating Burgess on his own. He also testified he was aware the statement would affect his plea.

[Defendant]: Yes.

[Defense counsel]: And the only way that that would happen, the case would proceed to trial, is if the Judge takes back your guilty plea, correct?

[Defendant]: Yes.

[Defense counsel]: And did you instruct me, knowing all of that, that you did not want me to oppose this motion?

[Defendant]: Yes.

[Defense counsel]: Who made that decision?

[Defendant]: I did.

[Defense counsel]: Is that your decision made voluntarily?

[Defendant]: Yes.

[Defense counsel]: And I advised you with regards to the consequences and what could take place if . . . we did not oppose this motion.

[Defendant]: Right.

Defendant was tried and convicted on multiple counts. After appropriate mergers, the trial court sentenced him to an aggregate forty-year custodial term subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. On direct appeal, we reversed four of defendant's robbery convictions and remanded for correction of the judgment of conviction as to those counts, but otherwise affirmed defendant's convictions and sentence. State v. Williams,

No. A-3084-10 (App. Div. Dec. 24, 2012). The Supreme Court denied defendant's petition for certification. State v. Williams, 214 N.J. 176 (2013).

The following year, defendant filed his PCR petition. He alleged counsel was ineffective for failing to properly investigate the case, for failing to move to dismiss some counts of the indictment, and for other reasons. The court appointed counsel and defendant filed a supplemental certification and brief. He alleged, among other claims, trial counsel was ineffective for failing to explain that defendant's testimony at Burgess' trial could be used against him at his own trial, regardless of whether he testified. Defendant also alleged trial counsel failed to prepare him to testify at his trial.

The PCR judge conducted an evidentiary hearing on defendant's petition. At the hearing, defendant testified his trial attorney told him if he did not testify during his trial, the State could not use the testimony he gave at Burgess' trial: "[s]he just told me, basically, that as long as I don't take the stand the testimony couldn't come in, that's the only way it could come in."

According to defendant, counsel's erroneous advice affected his decision to accept the plea. He claimed that had he known the videotape of his previous testimony would be used at his trial, he would have taken the plea bargain and never gone to trial. When

asked why, he replied: "[b]ecause less time. Forty years from [fifteen] years is a big difference."

Defendant acknowledged he testified at his trial, but said he did so only because "the tape [of his previous testimony] was already in, so there was nothing else left for [him] to do but testify to [his] [version] of the story." In terms of his own testimony, defendant claimed his trial counsel never prepared him. He asserted she did not review basic rules of testimony, topics she would cover, or practice questions. In short, he maintained counsel prepared him for neither his direct examination nor cross-examination.

On cross-examination, defendant conceded he had given fourteen separate statements to the police about his involvement in the robberies. He acknowledged counsel had told him that if not suppressed, his inculpatory statements could be used against him at his trial. Defendant admitted his attorney told him his testimony at his codefendant's trial might be used against him if his case went to trial. Defendant also admitted counsel told him the only way the State could use his statements would be in the event the court granted the State's motion to vacate his guilty plea. Lastly, defendant acknowledged it was his decision not to oppose the State's motion, and that he made the decision voluntarily.

Defendant's trial counsel testified at the PCR hearing. She explained she had filed a pre-trial motion to suppress the statements defendant gave to police after his arrest. The trial court denied the motion. During the trial, when the State decided to use defendant's testimony from his codefendant's trial, counsel also attempted to bar the State from doing so. Once again, she was unsuccessful.

Counsel testified she prepared defendant for trial and ultimately for his testimony. She explained she met with defendant numerous times at the jail. Defendant had a copy of all discovery, including transcripts and statements. Before the trial began, counsel explained to defendant what evidence the State would use against him and the consequences if he chose to testify. Counsel stated she would further prepare defendant to testify at the close of the State's case.

Once defendant decided to testify, counsel "went over his entire case[,] " asking questions as if she were the prosecutor. Counsel explained she could not say for certain what the State would ask defendant, but could only guess.

In a written decision filed January 28, 2015, the PCR judge denied defendant's petition. The judge determined trial counsel had "incorrectly advised [defendant] that his testimony at the codefendant's trial would only be admissible if he were to

testify[.]” According to the judge, the record from defendant's trial and trial counsel's testimony at the PCR hearing supported defendant's claim trial counsel had misinformed him about the use of his prior testimony. The judge based these determinations on, among other reasons, trial counsel's testimony at the PCR hearing about how she strenuously and repeatedly argued against the admissibility of defendant's prior testimony at his own trial.²

Nonetheless, the judge determined defendant could not show he suffered prejudice as a result. The judge pointed out defendant declined a twenty-year plea offer from the State following his unsuccessful motion to suppress fourteen confessions he made to the police. The judge rejected as not credible defendant's testimony that had he known his testimony from codefendant's trial could have been used at his trial, he would not have refused the plea offer. The judge noted that in his confessions, defendant admitted to directly participating in the robberies of four establishments and serving as the lookout during the robbery of a fifth establishment. The judge also cited instances in other

² In her written decision, the PCR judge did not comment on the explicit advice trial counsel gave defendant at the hearing on the State's motion to vacate the plea; namely, that if defendant chose to go to trial, the State might be able to use the testimony he gave at his codefendant's trial against him.

statements where defendant admitted to participating to some degree in other robberies.

Additionally, the judge rejected as not credible defendant's "self-serving testimony that trial counsel advised him he had to take the stand once the videotape [of his testimony at his codefendant's trial] was played and then neglected to prepare him for his direct and cross[-]examination." The judge noted defendant "has failed to specify how his testimony would have been different had trial counsel better prepared him."

On appeal, defendant contends:

POINT I

THE PCR COURT IMPROPERLY DENIED MR. WILLIAMS'S PETITION FOR POST-CONVICTION RELIEF WHERE MR. WILLIAMS ESTABLISHED THAT HE RELIED ON COUNSEL'S ERRONEOUS ADVICE WHEN HE REJECTED THE STATE'S PLEA OFFER AND RECEIVED A SIGNIFICANTLY HIGHER SENTENCE AFTER TRIAL.

- A. Counsel erroneously advised Mr. Williams that his prior trial testimony could not be used against him at trial, which impacted the plea process [and] greatly prejudiced Mr. Williams.
- B. Trial counsel failed to adequately prepare for trial and to prepare Mr. Williams to testify in his own defense.

To prove ineffective assistance of counsel, a defendant must satisfy the Strickland two-part test by demonstrating counsel's

performance was deficient, that is, "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment;" and "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, 104 S. Ct. 2052, 2064, 2068, 80 L. Ed. 2d 674, 693, 698 (1984); accord, State v. Fritz, 105 N.J. 42, 58 (1987). Applying that standard, we affirm, substantially for the reasons given by the PCR judge.

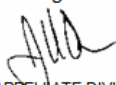
The judge rejected as not credible defendant's claim he would not have rejected a plea had he known his testimony at his codefendant's trial could be used against him at his trial. We generally defer "to those findings of the trial judge which are substantially influenced by [the] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Johnson, 42 N.J. 146, 161 (1964). This principle is particularly applicable to the case before us. Here, defendant claims his decision to accept or reject a plea was affected by erroneous advice about the use of testimony he had given in another trial, yet seemingly unaffected by his fourteen admissible confessions. Defendant has failed to establish the second Strickland prong, namely, "there is 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.

We also agree with the PCR judge that defendant's bare allegation his attorney did not prepare him to testify is insufficient to establish an ineffective-assistance claim. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). Defendant's remaining arguments are without sufficient merit to warrant further discussion. 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