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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4135-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JIHAD BASSIT, a/k/a JIHAD
BAASIT,

Defendant-Appellant.

Submitted September 13, 2017 – Decided October 5, 2017

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 08-
10-3194.

Joseph E. Krakora, Public Defender, attorney
for appellant (Adam W. Toraya, Designated
Counsel, of counsel and on the brief.

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Stephen
A. Pogany, Special Deputy Attorney
General/Acting Assistant Prosecutor, on the
brief).

PER CURIAM

Defendant Jihad Bassit appeals from the order of the Criminal Part denying his post-conviction relief (PCR) petition. We affirm.

An Essex County Grand Jury returned a five-count indictment against defendant charging him with murder, N.J.S.A. 2C:11-3a(1) and (2), first degree attempted murder, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3, second degree unlawful possession of a handgun, N.J.S.A. 2C:39-5b, and second degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4a. Defendant was also charged in an Accusation with first degree conspiracy to commit murder, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:11-3a(1) and (2).

On June 9, 2010, defendant entered into a negotiated agreement with the State through which he pleaded guilty to first degree aggravated manslaughter, N.J.S.A. 2C:11-4, as a lesser included offense of murder, second degree aggravated assault, N.J.S.A. 2C:12-1b, as a lesser included offense of attempted murder, second degree possession of a handgun for an unlawful purpose, and first degree conspiracy to commit murder. In return, the State agreed to recommend that defendant be sentenced to an aggregate term of twenty years, with an eighty-five percent period of parole ineligibility and five years of parole supervision under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

At the plea hearing, the judge questioned defendant directly to confirm he was aware of and understood the terms of the plea

agreement. The judge found defendant had been apprised of his constitutional rights to stand for trial on these charges and had voluntarily agreed to waive those rights as part of the plea agreement. The judge also confirmed that defendant had sufficient time to discuss this matter with his attorney and was satisfied with his services.

On November 1, 2010, defendant moved to withdraw his guilty plea. Defense counsel represented to the trial judge that defendant's motion was predicated on his assertion of innocence. Counsel explained that defendant believed that "my advice" in persuading him to plead guilty was "inappropriate wisdom[.]" Defendant "feels on reflection . . . that in following my advice he made a mistake and he wishes now to withdraw his plea[.]" After considering the arguments from both defense counsel and the prosecutor, the judge applied the factors the Supreme Court established in State v. Slater, 198 N.J. 145 (2009) and denied defendant's motion. The judge thereafter sentenced defendant consistent with the terms of the plea agreement. Defendant appealed the sentence imposed by the court pursuant to the summary review process in Rule 2:9-11. We affirmed. State v. Jihad Bassit, Docket No. A-4218-10 (App. Div. August 31, 2011).

On August 9, 2012, defendant filed a pro se PCR petition alleging ineffective assistance of trial counsel. The trial court

assigned PCR counsel to represent defendant in this endeavor. With the assistance of PCR counsel, defendant submitted a supplemental certification in which he alleged that "several days" after he pled guilty, he received a letter from codefendant Tourie Moses. Moses allegedly admitted in this letter that he had given a "false statement" against defendant to the police "hoping that lying against [defendant] would benefit him in resolving his own homicide arrest." Defendant claimed he filed a pro se motion to withdraw his guilty plea the day after he received Moses' letter.

Defendant alleged in this certification that his attorney came to see him at the jail after he learned from the prosecutor of defendant's efforts to withdraw the guilty plea. According to defendant, trial counsel discouraged him from withdrawing his guilty plea.

My attorney expressed that the guilty plea was still my best option given the situation that I was in.

. . . .

While I knew all of the discovery documents that I had reviewed over some time about the alleged facts of the first case to come up with a false factual basis, my attorney, despite my assertions of innocence, told me what to say regarding the Accusation on the second case.

While prior to the plea withdrawal Motion I had requested that my attorney speak with Tourie Moses regarding the letter that I had

received exonerating me from writing the alleged incriminating letter in Mr. Moses' possession at the time of his arrest, to my knowledge my attorney never met with Mr. Moses or his attorney.

The PCR record also included a copy of Moses' exculpatory letter and a certification by Moses in which he, in part, averred:

I had a letter that had incrimination words in it that I don't know who sent to me, in certainty I can say it wasn't from [defendant]. I stated it was from him upon being interviewed by Irvington detectives because they said they knew it [came] from him, so I went along and composed lies accordingly hoping it would benefit me, evidently I was involved in a murder I later confessed to. I knew nothing about his case, I did not know a witness, to my knowledge it's a female, but I went to kill a rival gang member I had numerous disputes with.

I hope it's not too late to straighten out what I did[.] In honesty I acted alone. He had nothing to do with my case.

On April 12, 2013, the PCR judge heard oral argument on defendant's petition. After considering the arguments presented by counsel, the judge denied defendant's petition in an order entered on April 16, 2013. The judge explained the basis of his ruling in a written decision attached to the order. Defendant appealed to this court arguing, in part, that the PCR judge erred in denying the petition without conducting an evidentiary hearing. After reviewing the record developed before the PCR judge, we affirmed the denial of PCR with respect to defendant's guilty plea

to charges related to the indictment. With respect to defendant's guilty plea to the charge in the Accusation of first degree conspiracy to commit murder, we concluded:

In this case, there are significant questions of fact that can be resolved by an evidentiary hearing in which the trial court can assess the credibility of witnesses. Those questions include: whether defendant did receive a letter from Moses prior to his sentencing; the contents of any letter received; the full extent of communications between defendant and his attorney regarding the motion to withdraw the plea, including whether he provided the letter to his attorney, what information defendant provided to his attorney about the letter and Moses; and defense counsel's reasons for failing to contact Moses or use the letter in support of defendant's motion.

[State v. Jihad Bassit, Docket No. A-40-13 (App. Div. August 4, 2015), slip op. at 14-15.] .

We therefore remanded the matter for the PCR court to conduct an evidentiary hearing limited to defendant's claim of ineffective of counsel in connection with the charge in the Accusation of first degree conspiracy to commit murder.

On December 4, 2015, the PCR judge adhered to our instructions and conducted an evidentiary hearing. Defendant's trial counsel, Touriee Moses, and defendant testified at the hearing. The State did not call any witnesses. When asked directly whether he received a letter from Moses concerning the charge in the

Accusation, trial counsel responded: "I don't recall it. I don't recall a letter from co-defendant, Mr. Moses, . . . being provided to me." Trial counsel stated that if such a letter had been given to him at the time, he would have made an effort to include it in support of defendant's motion to withdraw his guilty plea. Trial counsel emphasized that any document attesting to defendant's innocence addresses directly one of the key factors under Slater.¹ He also testified that he would have spoken to Moses' attorney to get his "permission to talk to Mr. Moses."

Defendant and Moses both testified in sharp contrast to defense counsel's testimony. In the process, however, they both provided highly incriminating evidence about their membership in the "crips," a notoriously violent gang. Defendant claimed he sent the alleged letter to defense counsel by regular mail while he was held in either the Bergen County Jail or the Essex County

¹ In Slater, the Supreme Court held

trial judges are to consider and balance four factors in evaluating motions to withdraw a guilty plea: (1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused.

[Slater, supra, 198 N.J. 158-59]

Correction facility. He did not keep a copy of the letter. Moses identified defendant as his co-conspirator when he pled guilty to first degree conspiracy to commit murder.

In assessing the credibility of the witnesses who testified at the evidentiary hearing, the PCR judge noted he presided over the plea hearings of both defendant and Moses and sentenced both men in accordance with their respective plea agreements. Against this backdrop, the PCR judge made the following factual findings.

I have concluded that [defense counsel's] remarks under oath are wholly credible versus the testimony of Bassit and Moses, which are patently unbelievable and false. Bottomed on the evidence presented, the court finds, parenthetically, that the mystery Moses letter exculpating Bassit never existed. Further the avouchment that a letter of exculpation was made available to defense counsel, which was vehemently disputed by [defense counsel], and the facts and testimony developed on the issue clearly indicate that such a claim is a complete and utter fabrication.

The judge ultimately concluded that defendant had not established a prima facie case of ineffective assistance of trial counsel and denied the petition.

Against this record, defendant now appeals raising the following argument.

POINT ONE

THE PCR COURT'S ORDER SHOULD BE REVERSED AND THE MATTER REMANDED TO THE TRIAL COURT TO ALLOW THE DEFENDANT TO VACATE HIS GUILTY PLEA

BECAUSE THE PCR COURT ERRED IN DETERMINING THAT DEFENDANT DID NOT MEET HIS BURDEN UNDER THE STRICKLAND STANDARD OF INEFFECTIVE ASSISTANCE OF COUNSEL.

A PCR petition is our State's analogue to the federal writ of habeas corpus. See State v. Afanador, 151 N.J. 41, 49 (1997). As our Supreme Court has recently reaffirmed:

To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the familiar two-prong test outlined in Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984), and adopted by this Court in State v. Fritz, 105 N.J. 42, 58 (1987). Defendant must show both (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the outcome. Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693; Fritz, supra, 105 N.J. at 58.

[State v. Pierre-Louis, 216 N.J. 577, 579 (2014)]


In determining a claim of ineffective assistance of counsel in a case in which a defendant pled guilty, "the issue is whether it is ineffective assistance of counsel for counsel to provide misleading, material information that results in an uninformed plea, and whether that occurred here." State v. Nunez-Valdez, 200 N.J. 129, 139-40 (2009). Furthermore, we are bound to defer to the trial court's factual findings which are substantially influenced by the judge's opportunity to hear and see the witnesses and to have the "feel" of the case. State v. Elders, 192 N.J.

224, 244 (2007) (citing State v. Johnson, 42 N.J. 146, 161, 199 A.2d 809 (1964)).

Mindful of this standard of review, we affirm substantially for the reasons expressed by the PCR judge in his written opinion dated March 29, 2016. Defendant has not presented sufficient credible evidence to warrant PCR.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION