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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4259-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDWARD GRAHAM, JR.,

Defendant-Appellant.

Submitted October 18, 2016 – Decided March 27, 2017
Before Judges Koblitiz and Sumners.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
09-06-2308.

Joseph E. Krakora, Public Defender, attorney
of appellant (Dianne Glenn, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Jennifer E. Kmiecik,
Deputy Attorney General, of counsel and on the
brief).

PER CURIAM

Defendant Edward Graham, Jr. appeals the March 11, 2015 order
denying his petition for post-conviction relief (PCR) without an

evidentiary hearing. In a single point on appeal, defendant argues:

THE PCR COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WITHOUT CONDUCTING AN EVIDENTIARY HEARING TO DETERMINE THE MERITS OF HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

After reviewing the record in light of the contentions advanced on appeal, we affirm.

I.

The pertinent facts and procedural history are set forth in our decision on defendant's direct appeal, State v. Graham, A-0025-11 (App. Div. Nov. 30, 2012), certif. denied, 214 N.J. 116 (2013). A brief summary will suffice here.

On October 10, 2008, after defendant and C.B.¹ were dating for two months, defendant went to C.B.'s residence to confront her about her alleged infidelity. Defendant subsequently assaulted C.B., and without her permission, took the keys to her Ford Expedition and drove away. Unbeknownst to C.B., two days earlier, defendant and a female acquaintance went to a motor vehicle commission agency and transferred title to the Expedition, first to the acquaintance, and then to himself. According to defendant, C.B. agreed to transfer title to him because he paid for having

¹ We use initials to protect the identity of the victim pursuant to Rule 1:38-3(d)(10).

the vehicle repaired and towed. The vehicle had been titled to C.B. and her mother.

At the conclusion of the jury trial, defendant was convicted of various offenses, the most serious being second-degree robbery, N.J.S.A. 2C:15-1(a)(1). He was sentenced to an aggregate eleven-year term subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. On defendant's appeal, we affirmed his conviction but remanded to modify his judgment of conviction to merge two offenses.

A year later, defendant submitted a pro se PCR petition alleging ineffective assistance of counsel, and was subsequently assigned counsel. After Judge Edward J. McBride, Jr. heard oral argument, he reserved decision and issued a comprehensive written decision on March 11, 2015. The judge found that defendant was not entitled to an evidentiary hearing because he failed to establish a prima facie case of ineffective assistance of counsel under the test set forth in Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). Under the two-pronged Strickland/Fritz test, the defendant must demonstrate his counsel's performance was deficient, and there exists "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.

Judge McBride rejected defendant's contention that trial counsel's failure to investigate and call several witnesses amounted to ineffective assistance. Relying upon State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999), the judge found that, without certifications or affidavits accompanying the reports of interviews of six witnesses, defendant did not provide competent evidence to support his argument. Nonetheless, assuming the reports submitted by defendant were admissible, the judge addressed the merits of defendant's contentions.

[N]one of these purported witnesses said anything about the events of October 10, 2008. [Also,] the sources of information they claim to have about who owned the vehicle are alleged statements by either [defendant or C.B.] None of these witnesses would have been permitted to testify about what [defendant or C.B.] told them because such testimony would be inadmissible hearsay.

Defendant claimed that he told trial counsel there were six witnesses who could support his assertion that C.B. gave him the vehicle's title in lieu of payments he made for repairs and towing costs totaling \$1000, and corroborate that C.B.'s assault accusations were false and stemmed from his termination of their relationship due to his interest in other women. Defendant

maintained that trial counsel's failure to interview the witnesses and have them testify amounted to a prima facie case of ineffective assistance of counsel.

Judge McBride disagreed, noting defendant's trial testimony that C.B. gave him the vehicle in exchange for paying repair and towing costs and that C.B. sought vindication because she was jealous of defendant for having relationships with other women, was largely discredited. The judge specifically cited the State's expert's testimony that C.B.'s signature authorizing transfer of title to her vehicle to defendant was forged, and the medical evidence corroborated C.B.'s testimony that defendant assaulted her on the day of the incident. Finding that defendant's six witness interview reports and defendant's discredited testimony were essentially the same, the judge determined there is "no reasonable probability that the purported witnesses' testimony would have caused the jury to find [defendant] not guilty of one or more of the charges [and thus,] there is no prima facie case of ineffective assistance of counsel[.]"

The judge also rejected defendant's contention that trial counsel failed to object to the prosecutor's leading examination of C.B. and the hearsay statements by C.B.'s mother, the investigating police officers, and the doctor who treated C.B. The judge determined that counsel's decisions were matters of

sound trial strategy that does not constitute a prima facie claim of ineffective assistance under Strickland, supra, 466 U.S. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694-95. He further found no merit to defendant's contention that trial counsel's ineffective cross-examination of the investigating officers and doctor resulted in the jury hearing inculpatory evidence.

Lastly, Judge McBride found no merit in defendant's contention that trial counsel did not object to the alleged prosecutorial misconduct in examination of witnesses. He noted that the prosecutor's conduct was not improper and did not deny defendant a fair trial. He also determined that counsel's failure to object or ask for curative instructions regarding revelations that defendant had a suspended driving license and unpaid child support obligations was trial strategy, not ineffective assistance. The judge pointed out trial counsel was diligent in making several appropriate objections during the prosecutor's questioning that were sustained. Furthermore, he found defendant did not demonstrate that any prejudice occurred from these alleged deficiencies.² This appeal followed.

² The judge also determined that defendant's pro se arguments were similar to the arguments raised by his PCR counsel, which were rejected.

II.

Before us, defendant argues that an evidentiary hearing should have been held because he established a prima facie case of ineffective assistance of counsel. He specifically contends his submission of investigative reports from six witnesses evince that C.B. agreed to transfer title of the vehicle, but lied because she was vengeful when he ended their relationship. He asserts that testimony by two of the witnesses would not have been inadmissible hearsay because they had personal knowledge of his relationship with C.B. He also contends that trial counsel should have personally contacted critical witnesses who were interviewed by PCR counsel's investigator. Defendant maintains that the unrepresented testimony would have discredited C.B.'s testimony, thereby changing the outcome of his conviction.

Our examination of defendant's claims and review of the record convinces us that defendant was not denied effective assistance of counsel, and there was no need for an evidentiary hearing. We affirm substantially for the reasons set forth in Judge McBride's well-reasoned written decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION