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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5624-13T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAJEEM A. SCOTT,

Defendant-Appellant.

Submitted June 21, 2016 – Decided June 16, 2017

Before Judges Espinosa and Kennedy.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County,
Indictment No. 11-04-0648.

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

Carolyn A. Murray, Acting Essex County
Prosecutor, attorney for respondent (Andrew
R. Burroughs, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant appeals from the denial of his petition for post-conviction relief (PCR) following an evidentiary hearing. We

affirm, substantially for the reasons expressed by Judge Martin G. Cronin in his oral decision.

Defendant entered a guilty plea to an amended charge of third-degree conspiracy to commit aggravated assault, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:12-1(b)(7), pursuant to a plea agreement in which three other charges were dismissed. At the time defendant entered his guilty plea, he testified that he agreed with two others to "beat . . . up" the victim, J.E., "pretty seriously." He admitted that J.E. was, in fact, beaten up by one or more of the three of them. Defendant was sentenced to three years' probation and did not file a direct appeal.

Approximately one year later, he filed a pro se PCR petition and was assigned counsel. Defendant contended he was denied the effective assistance of counsel because his attorney failed to inform him of the severity of the crime, the defenses available to him, the penal consequences of his conviction and the terms of his plea agreement, and also failed to conduct an adequate investigation.

Judge Cronin conducted an evidentiary hearing and provided a comprehensive statement of reasons for denying the application.

Defendant presents the following arguments in this appeal:

POINT I

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED BECAUSE TRIAL COUNSEL'S TESTIMONY CONFIRMING DEFENDANT'S CLAIM THAT THERE WAS AN INADEQUATE PRETRIAL INVESTIGATION SATISFIED DEFENDANT'S BURDEN TO PROVE INEFFECTIVE ASSISTANCE OF COUNSEL BY A PREPONDERANCE OF THE EVIDENCE.

POINT II

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED BECAUSE IT VIOLATED DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

POINT III

THE PCR COURT ERRED IN DENYING DEFENDANT'S POST-CONVICTION RELIEF MOTION TO SET ASIDE HIS GUILTY PLEA PURSUANT TO STATE V. SLATER^[1].

We are not persuaded by any of these arguments and affirm.

The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-

¹ 198 N.J. 145 (2009).

prong test of establishing both that: (1) counsel's performance was deficient and he or she made errors that were so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such that 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 687, 694, 104 S. Ct. at 2064, 2068, 80 L. Ed. 2d at 693, 698.

Defendant first argues that his trial counsel was ineffective for failing to conduct an adequate pretrial investigation. He states that, at the evidentiary hearing, "trial counsel confirmed defendant's claim that he failed to conduct any pretrial investigation, and failed to file a pretrial motion to suppress the identification of defendant because he believed that there were no viable defense issues."

In his appellate brief, defendant has not identified any pretrial investigation that would have produced result-changing evidence. Without such context, his contention that he would not have entered a guilty plea if counsel had conducted an adequate pretrial investigation rings hollow.

The thrust of this argument is that counsel was ineffective for failing to file a motion challenging the victim's

identification of defendant. At the evidentiary hearing, trial counsel explained in detail why he did not "think there was any viable legal challenge" to the identification. He noted the police witnessed defendant and another person attacking someone and gave chase. One of the officers caught defendant and returned him to the victim, who identified him at the scene. He noted further the victim and defendant knew each other; they had gone to school together and communicated on social media. At their first meeting, defendant told trial counsel the victim wanted to drop the charges against him. Trial counsel reviewed the requirements for a successful motion under United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967), and testified he saw no grounds for relief.

Judge Cronin found that defendant failed to satisfy either prong under Strickland. We agree.

Defendant also asked to set aside his guilty plea. During the hearing, defendant testified he lied when he entered his plea because he wanted to get probation rather than face a second-degree sentence. In considering this request, Judge Cronin applied the factors set forth in Slater, supra, 198 N.J. at 157-58:

- (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.

Addressing the first factor, Judge Cronin read the transcript of defendant's guilty plea and found it belied his claim of innocence. In addition, Judge Cronin reviewed the discovery available to defendant at the time the guilty plea was entered, which he found "wholly inconsistent with innocen[c]e."

Turning to defendant's professed reason for seeking to withdraw his guilty plea – that his counsel was ineffective during the plea-bargaining process – Judge Cronin found this challenge meritless. He found defendant's assertions that he was unaware of the penal consequences of his conviction and the fact he might lose his employment were refuted by his testimony when he entered his guilty plea as well as the plea form.

Finally, Judge Cronin noted the plea was entered pursuant to an agreement. Because defendant had failed to present a colorable claim of innocence or state a valid reason for withdrawal, there was no need to balance factors in favor of withdrawal against possible prejudice to the State. He concluded defendant's motion to withdraw his guilty plea lacked merit.

The trial court's denial of defendant's motion is subject to review for abuse of discretion. State v. Mustaro, 411 N.J. Super. 91, 99 (App. Div. 2009). We discern none here.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION