

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0416-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CLEMENT BILSKI, JR.,

Defendant-Appellant.

Submitted April 18, 2018 – Decided May 8, 2018

Before Judges Koblitiz and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
06-08-1816.

Joseph E. Krakora, Public Defender, attorney
for appellant (Mark Zavotsky, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Monica do
Outeiro, Assistant Prosecutor, of counsel and
on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Clement Bilski, Jr. appeals from the July 27, 2015 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

In August 2006, defendant was charged with 429 counts of sex-related crimes, which involved over 150 incidents and numerous victims, including 11 children. All counts were supported by video recordings depicting defendant engaged in the above-mentioned crimes.

The first 150 counts of the indictment, which related to sexual acts committed against one child victim, were severed by request of the State. Defendant did not object. Specifically, defendant was charged with seventy-four counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(4); fifty-two counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1); fifteen counts of second-degree sexual assault, N.J.S.A. 2C:14-2(b); five counts of third-degree criminal restraint, N.J.S.A. 2C:13-2(a); two counts of third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); one count of third-degree promoting obscene material, N.J.S.A. 2C:34-3(b)(2); and one count of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a).

Several pretrial motions were held prior to trial, all of which were denied. Additionally, in preparation to defend against

the charges of the indictment, counsel for defendant obtained permission from the Office of the Public Defender (OPD) to allow defendant to be evaluated by an expert to explore the possibility of a "psychiatric defense." Unsatisfied with the first expert opinion, defendant's counsel again sought permission from the OPD to have a second psychiatric evaluation of defendant implemented. Although initially denied, a second evaluation was approved rendering once more an evaluation that "was not helpful" to defendant's defense. A third request for an evaluation was denied.

Trial commenced on March 4 through 6, 2008, and again on March 11, 2008. Evidence presented at trial consisted of testimony of the investigating officers, the victim's father, and edited video recordings that contained "approximately five hours of very graphic, very clear video[s] of child pornography[.]"

At the conclusion of the State's case, the jury was asked to consider 143 counts of sex-related offenses against defendant, excluding the counts charging defendant with criminal restraint and possession of a weapon for unlawful purpose. After deliberation, on March 12, 2008, the jury returned a guilty verdict as to all 143 counts presented.

Defendant appeared for sentencing on May 30, 2008. The judge heard from the victim's father, both counsel, and defendant before weighing the aggravating and mitigating factors, and imposing

sentence. In fashioning an appropriate custodial sentence, the judge noted that "separation from society is the main concern of this [c]ourt in this case[.]" The judge further added, "For over four years defendant made a sex slave out of a beautiful innocent child. For the multiple times he violated her body in the most degrading of ways, he deserved consecutive sentences that will prevent him from being ever released back into society." The judge then sentenced defendant to consecutive custodial sentences on 4 of the 143 counts for an aggregate sentence of 80 years in New Jersey State Prison, subject to 61 years of parole ineligibility.

Subsequently, defendant appealed the conviction and sentence to the Appellate Division. We affirmed finding "while harsh, [it] is fair overall and does not shock the judicial conscience." A petition for certification was then filed with the New Jersey Supreme Court, which was denied on July 22, 2011. State v. Bilski, 207 N.J. 228 (2011).

In September 2012, defendant filed a petition for PCR. Oral argument was heard on two occasions, both yielding a reserved decision. On July 27, 2015, the PCR judge issued a twenty-six page written decision that supported the denial of defendant's PCR. This appeal followed.

Defendant raises the following arguments on appeal:

POINT I

THE PCR JUDGE ERRED WHEN SHE RULED DEFENDANT WAS BARRED FROM BRINGING A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO INVESTIGATE A DEFECTIVE THIRD-PARTY SUBPOENA AND FAILURE TO INVESTIGATE FALSE FACTS CONTAINED IN AN AFFIDAVIT.

POINT II

DEFENDANT'S PETITION FOR POST[-]CONVICTION RELIEF SHOULD NOT BE BARRED AS HAVING HAD THE POTENTIAL OF BEING HEARD IN PRIOR PROCEEDINGS BECAUSE NO RECORD EXISTED TO MAKE THAT ADJUDICATION AND BECAUSE THE INTERESTS OF JUSTICE REQUIRE HIS CLAIMS BE HEARD.

POINT III

DEFENDANT HAS SUBMITTED PRIMA FACIE EVIDENCE REQUIRING HE BE GRANTED AN EVIDENTIARY HEARING ON POST[-]CONVICTION RELIEF.

POINT IV

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ENTITLING HIM TO POST[-]CONVICTION RELIEF.

(A) Failure to obtain a psychiatric exam to conduct a minimally adequate investigation into the obvious available defenses of insanity or diminished capacity.

(B) Counsel was ineffective for failing to obtain an expert to support defendant's recognized mental illness as an applicable mitigating factor at sentencing.

POINT V

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF PCR COUNSEL FOR FAILING TO ENGAGE IN A MINIMAL LEVEL OF PREPARATION PRIOR TO REPRESENTING DEFENDANT AT HIS PCR HEARING.

Defendant filed a pro se brief in support of his appeal outlining additional arguments not addressed by his counsel. Those arguments were not raised below. Therefore, we will not address them in a written opinion.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Preciose, 129 N.J. 451, 459 (1992). Under Rule 3:22-2(a), a criminal defendant is entitled to post-conviction relief if there was a "[s]ubstantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of the State of New Jersey[.]" "A petitioner must establish the right to such relief by a preponderance of the credible evidence." Preciose, 129 N.J. at 459 (citations omitted). "To sustain that burden, specific facts" that "provide the court with an adequate basis on which to rest its decision" must be articulated. State v. Mitchell, 126 N.J. 565, 579 (1992).

Claims of constitutionally ineffective assistance of counsel are well suited for post-conviction review. See R. 3:22-4(a)(2); Preciose, 129 N.J. at 460. In determining whether a defendant is

entitled to relief on the basis of ineffective assistance of counsel, New Jersey courts apply the two-prong test articulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984), and United States v. Cronin, 466 U.S. 648, 658-60 (1984). Preciose, 129 N.J. at 463; see State v. Fritz, 105 N.J. 42, 49-50 (1987).

Under the first prong of the Strickland test, a "defendant must show that [defense] counsel's performance was deficient." Strickland, 466 U.S. at 687. Under the second prong, a defendant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

Having considered the record in light of controlling law, we affirm substantially for the reasons stated in the comprehensive, well-reasoned written opinion of Judge Honora O'Brien Kilgallen.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION