SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0670-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TIECE RIDDICK,

Defendant-Appellant.

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Submitted January 24, 2018 – Decided February 7, 2018

Before Judges Alvarez and Nugent.

On appeal from Superior Court of New Jersey, Law Division, Camden County, Indictment No. 10-01-0335.

Joseph E. Krakora, Public Defender, attorney (William Welaj, Designated Counsel, on the brief).

Mary Eva Colalillo, Camden County Prosecutor, attorney for respondent (Linda A. Shashoua, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Tiece Riddick appeals an August 12, 2016 Law Division order denying her petition for post-conviction relief

(PCR). For the reasons stated by Judge Steven J. Polansky, we affirm.

Defendant was sentenced on January 26, 2012, to an aggregate seven-year term of imprisonment, subject to the No Early Release Act's (NERA) eighty-five percent parole disqualification, N.J.S.A. 2C:43-7.2. A jury convicted defendant of, among other crimes, second-degree vehicular homicide, N.J.S.A. 2C:11-5. Her convictions and sentence were affirmed on direct appeal. State v. Riddick, No. A-2742-11 (App. Div. Nov. 6, 2014). The Supreme Court denied certification. State v. Riddick, 222 N.J. 18 (2015). This petition for PCR followed.

A full account of the underlying incident and trial is found in our prior opinion. Riddick, (slip op. at 1-15). Suffice it to say here that while operating a motor vehicle with a blood alcohol concentration (BAC) of between .12 and .18, defendant rear-ended another motorist in the eastbound right lane of the Atlantic City Expressway. The passenger in the other vehicle died. The driver, and two children seated in the back of that car, were injured.

Pertinent to the issues raised in this appeal, on July 6, 2010, defendant signed a pretrial memorandum as required by Rule 3:9-1(f). At the pretrial conference, the judge reviewed with defendant on the record the fact that if convicted at trial, she

could be sentenced to the maximum term of fourteen and one-half years of incarceration, subject to eight and one-half years of parole ineligibility. The judge asked defendant if she was familiar with the State's plea offer of five years state prison subject to NERA; defendant responded yes. Defendant indicated that she understood the charges and the plea offer, and the possible consequence if she went to trial. The judge even explained that the plea offer would not be "persuasive in my mind of anything," and that if defendant were convicted, the judge would sentence defendant based solely on the proofs at trial and the evidence presented "on the day of sentencing." Defendant said she understood. The judge also extended the plea cutoff time to August 15, thereby affording defendant an additional five weeks to consider the offer.

In his cogent decision denying defendant relief, Judge Polansky noted that of the combined seven issues raised by defendant, both in the counseled and uncounseled briefs, three had been previously found to lack merit on direct appeal. He therefore did not address them, as they were barred from relitigation on PCR.

Defendant did not identify any possible benefit of additional investigation. She also failed to explain, given the pretrial conference and the memo she signed, why she had been unable to

make an intelligent decision to reject the plea offer and take the matter to trial. The judge therefore considered these claims to constitute mere bald assertions which did not establish a prima facie case.

As to the argument that defendant was ineffectively represented because counsel did not call as witnesses retained experts in toxicology and accident reconstruction, the judge found it impossible to assess whether their testimony would have had a beneficial impact on the outcome of the trial. No affidavits or certifications from them were provided in support of the petition. Furthermore, he considered the decision not to call expert witnesses to be one of trial strategy not reviewable on PCR.

The judge also found defendant's claim that she was ineffectively represented on appeal because counsel did not sufficiently communicate with her to be lacking in merit. She neither explained the potential benefit of enhanced communications nor supported the argument with anything more than a bald assertion. Defendant's contention that counsel was ineffective due to the failure to file a motion to suppress evidence was simply left similarly unsubstantiated.

Now on appeal, defendant raises only one point:

> POINT I:
> THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR POST CONVICTION

RELIEF WITHOUT AFFORDING HER AN EVIDENTIARY HEARING TO FULLY ADDRESS HER CONTENTION THAT SHE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL SINCE, AS A RESULT OF HER ATTORNEY'S FAILURE TO ACCURATELY INFORM HER WITH RESPECT TO THE STATE'S PLEA OFFER, SHE REJECTED THE PLEA RECOMMENDATION AND INSTEAD PROCEEDED TO TRIAL, SUBSEQUENTLY RECEIVING A SENTENCE GREATER THAN THAT EMBODIED IN THE PLEA OFFER.

In order to succeed on a claim of ineffective assistance of counsel, a petition must establish, first, that the challenged representation fell outside the range of competent professional assistance. Strickland v. Washington, 466 U.S. 668, 687 (1984). Second, a defendant must show that the ineffective assistance ultimately prejudiced the outcome. Ibid.

Rule 3:22-10(b) governs when PCR claims necessitate evidentiary hearings. Such hearings are required only when a prima facie case is established. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). In order to demonstrate a prima facie claim, "a petitioner must do more than make bald assertions that he was denied the effective assistance of counsel. He must allege facts sufficient to demonstrate counsel's alleged substandard performance." Ibid. A defendant must proffer specifics regarding any alleged omissions, and explain the manner in which the ineffective assistance actually had an impact on the outcome. Ibid.

In this case, as Judge Polansky explained, defendant's claims were not supported by the record, or by any certification or affidavit. Some arguments revisited issues already decided on direct appeal and were therefore barred from consideration by the rule. See R. 3:22-5. Thus, no prima facie case was established. No evidentiary hearing was required. That decision enjoys ample support in the record.

Our only additional comment relates to defendant's assertion on appeal that counsel failed to discuss the plea offer with her. The transcript of the proceedings belies that contention. We see little connection between Lafler v. Cooper, 566 U.S. 156 (2012), and this case, contrary to defendant's argument.

In Lafler, relief was afforded to a defendant who rejected a plea bargain based on admittedly erroneous information provided by defense counsel. 566 U.S. at 174-75. Here, there is no proof that anything untoward occurred. The State's proofs were overwhelming. Defendant, without asking even a single question, expressed on the record her correct understanding of the plea offer, her rejection of it, and her understanding of the consequences if it were rejected. This case is parallel to Lafler only because defendant contends she was not fully advised of the plea offer but bears no other similarity to it.

Accordingly, for the reasons stated by Judge Polansky, we affirm denial of the petition. To the extent defendant challenges the judge's factual findings and legal conclusions regarding her rejection of the plea bargain, we consider those arguments to be so lacking in merit as to not warrant further discussion in a written decision. R. 2:11-3(e)(2).

Affirmed.