SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0882-15T2
A-1085-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

STANLEY COOPER, a/k/a STANLEY COOPER, JR.,

Defendant-Appellant.

Submitted December 4, 2017 – Decided February 1, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Union County, Indictment No. 08-08-0746; and Middlesex County, Indictment Nos. 08-06-1014, 08-06-1016, 08-06-1018, 08-06-1028, 08-06-1032 and 08-06-1033.

Joseph E. Krakora, Public Defender, attorney for appellant in A-0882-15 (Kimmo Z.H. Abbasi, Designated Counsel, on the brief).

Joseph E. Krakora, Public Defender, attorney for appellant in A-1085-16 (Richard Sparaco, Designated Counsel, on the brief).

Thomas K. Isenhour, Acting Union County Prosecutor, attorney for respondent in A-0882-15 (Bryan S. Tiscia, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

Andrew C. Carey, Middlesex County Prosecutor, attorney for respondent in A-1085-16 (Nancy A. Hulett, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

In these back-to-back appeals, consolidated for purposes of this opinion, defendant appeals from two orders, each of which denied him post-conviction relief (PCR). We affirm.

I

These appeals arise out of a string of robberies that occurred in and for which defendant was prosecuted in Middlesex and Union Counties. Because necessary for context, we briefly recount the salient facts. At approximately 2:00 a.m. on March 8, 2008, the Woodbridge Police Department received a report of an armed robbery at a Quick Chek in that municipality. The perpetrator, later identified as defendant, was observed wearing dark clothes and a dark ski mask, and drove from the store in a white Chevy Lumina. A Woodbridge police officer pulled over a car consistent with that description and radioed for back-up assistance. Defendant was driving and three others occupied the

car, including defendant's sister, the owner of the car (sister).

The police ordered the occupants out of the car and, as each emerged, they were frisked, handcuffed and placed in a patrol car. The police then opened and searched the trunk of the car, where they found a ski mask, black gloves, a black skull cap, black jogging pants, a black handgun, and a Quick Chek bag containing cash.

The four occupants of the car were taken to the Woodbridge Police Station. While under arrest and in custody, the police commenced interviewing the occupants of the car. Defendant's sister gave a statement and, at about 7:00 a.m., consented to the search of her car. The officers then seized the aforementioned contents from the trunk. At approximately 10:45 a.m., defendant waived his Miranda[1] rights and gave a statement to the police admitting his involvement in the robbery earlier that morning, as well as in robberies that occurred in other municipalities in Middlesex County and in Union County, specifically, Linden and Rahway.

After defendant completed giving his statement, the Woodbridge police contacted the Linden and Rahway Police

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

Departments and reported what they had learned from defendant. By 3:00 p.m. a detective from the Linden Police Department and by 4:30 p.m. a detective from the Rahway Police Department had secured separate statements from defendant inculpating himself in various robberies in these two Union County municipalities. Defendant was subsequently indicted in Middlesex County for armed robbery and related offenses, which we refer to as the "Middlesex matter." He was similarly indicted in Union County, which we refer to as the "Union matter."

Defendant filed a motion in the Middlesex matter to suppress both the evidence seized from the trunk of the car and his statement to the police. The trial court initially determined the warrantless search of the trunk when defendant was pulled over violated defendant's constitutional rights. However, the court ultimately determined the sister's subsequent consent to search the trunk was sufficiently attenuated from the illegal search at the scene. Thus, on the basis of the consent search, the court declined to suppress the evidence discovered in the trunk. The court also declined to suppress the statement defendant gave to the Woodbridge police.

Thereafter, defendant pled guilty in the Middlesex matter. Specifically, he pled to eight counts of first-degree robbery, N.J.S.A. 2C:15-1, and one count of second-degree possession of a

firearm by certain persons, N.J.S.A. 2C:39-7(b). However, he preserved his right to appeal the denial of his suppression motions, and the parties agreed that if he were successful on appeal, his guilty pleas would be vacated. Defendant was sentenced to thirty years of imprisonment, with an eighty-five percent period of parole ineligibility.

After his suppression motion in the Middlesex matter was decided, defendant filed a motion in the Union matter to suppress the statements he gave to the detectives of the Linden and Rahway Police Departments. Citing the law of the case doctrine, the trial court rejected defendant's argument to reconsider any of the rulings made by the trial court in the Middlesex matter, but did note defendant's statements to the Linden and Rahway detectives were rendered voluntarily. The court then denied defendant's suppression motion.

Thereafter, defendant pled guilty to eleven counts of first-degree robbery, N.J.S.A. 2C:15-1, and one count of second-degree robbery, N.J.S.A. 2C:15-1. Defendant preserved his right to appeal the denial of his motion, but the parties did not further agree to vacate the pleas in the event defendant prevailed on appeal. He was sentenced in the aggregate to thirty years of imprisonment, with an eighty-five percent period

of parole ineligibility, to run concurrently to the sentence imposed in the Middlesex matter.

Defendant appealed from the orders denying his motions in both the Middlesex and Union matters. In the Middlesex matter, defendant contended the items seized from the trunk and his statement to the police were inadmissible "as fruit of the illegal police conduct." As for the Union matter, defendant argued his statements to the Linden and Rahway detectives were similarly inadmissible "as fruit of the unconstitutional . . . search conducted by the Woodbridge police." He did not assert the seizure of the items from the trunk constituted improper police conduct warranting suppression.

In a consolidated opinion, we noted that, in the Middlesex matter, the issue whether it was lawful for the police to open the trunk when defendant was initially pulled over was not before us. State v. Cooper, Nos. A-1048-10, A-1049-10 (App. Div. Dec. 5, 2012) (slip op. at 12). Notwithstanding, we did comment that we accepted the trial court's legal conclusion the police's initial entry into the trunk was improper. Id. at 16. However, we disagreed with the trial court's legal conclusion the sister's subsequent consent to search the trunk removed the taint from that improper search. Id. at 19. Accordingly, we

reversed that portion of the order denying defendant's motion to suppress the evidence seized from the trunk. Id. at 20.

We affirmed the denial of defendant's motion to suppress his statement to the Woodbridge police. Id. at 23. We determined defendant's confession was not the "fruit" of improper police conduct because there were "sufficient intervening circumstances that purged the taint of any prior illegality." Id. at 21-22. In addition, we concurred with the trial court's legal conclusion defendant's statement to the police was rendered knowingly and voluntarily after he was apprised of his Miranda rights. Id. at 23.

We observed the plea bargain permitted defendant to vacate his plea in the Middlesex matter if he prevailed on appeal, but we further noted the parties did not provide for what was to occur in the event he only partially succeeded. Ibid. Accordingly, we determined fairness dictated all of defendant's pleas be vacated and the matter remanded for further proceedings. Id. at 24. On remand, defendant pled guilty to the same offenses to which he had previously pled, but was sentenced to only fifteen years in prison, subject to an eighty-five percent period of parole ineligibility.

In the Union matter, we affirmed the trial court's order denying defendant's motion to suppress his statement for

essentially the same reasons we affirmed the trial court in the Middlesex matter on this issue. Specifically, defendant's statements were not tainted by the illegal search of the trunk and they were knowingly and voluntarily conveyed to the Linden and Rahway detectives. Id. at 26-27.

The Supreme Court denied defendant's petition for certification, 214 N.J. 176 (2013). Two months later, defendant filed a petition for post-conviction relief in connection with the Union matter, and in 2015 filed a separate petition with respect to the Middlesex matter. We address each petition separately.

II

A

In the Union matter, the principal contention defendant asserted before the PCR court relevant to the issues on appeal was as follows. Defendant maintained appellate counsel was ineffective for failing to assert that the inappropriate search of the trunk was not validated by the sister's consent, rendering the evidence discovered in the trunk inadmissible in the Union matter. Defendant conjectured that, had we reviewed the constitutionality of the initial search and found the sister's consent failed to validate that search, ultimately we

would have suppressed the evidence found in the trunk and vacated defendant's guilty pleas in the Union matter.

Following an evidentiary hearing, the PCR court denied defendant's petition for post-conviction relief. Among other things, the court credited appellate counsel's assertion none of the evidence in the trunk linked defendant to the robberies with which he had been charged in Union County. Therefore, the PCR court reasoned, it was unnecessary for counsel to advance any argument on appeal in support of suppressing the evidence in the trunk.

The PCR court also noted that, given his confessions, it was improbable defendant would have rejected the plea offer and have proceeded to trial even if the evidence in the trunk had been suppressed. Defendant's prior convictions subjected him to the Three Strikes Law, N.J.S.A. 2C:43-7.1. Defendant faced a maximum of 230 years in prison even if he were not subject to an extended term. As the PCR court found, "it is unreasonable, unfathomable, . . . to believe that defendant would have turned down a plea offer which called for an aggregate of 30 years . . . on 11 first degree robberies and 1 second degree robbery. All of which was concurrent to the Middlesex County sentence."

On appeal, defendant reprises essentially the same arguments. We briefly review the applicable law. 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 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (l987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet a two-prong test. The first prong is counsel's performance was deficient and he or she made errors so egregious counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution. Strickland, 466 U.S. at 687, 694.

The second prong is the defect in performance prejudiced defendant's rights to a fair trial and there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Ibid. If a defendant has pled guilty, the second prong a defendant must satisfy is "'there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial.'" State v. Nunez-Valdez, 200 N.J. 129, 139 (2009) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).

Here, having reviewed the record, we conclude defendant's arguments are without sufficient merit to warrant discussion in another opinion. R. 2:11-3(e)(2). We affirm the denial of the

PCR petition arising out of the Union matter for the reasons stated in the comprehensive and well-reasoned opinion rendered by the PCR court. In short, there is no competent evidence defendant met either prong of the Strickland standard.

B

The arguments defendant advanced before the PCR court in the Middlesex matter relevant to the issues on appeal are that plea counsel failed to (1) share all discovery with him before he pled guilty[2], and (2) file a motion to dismiss the indictment. The PCR court did not hold an evidentiary hearing. In a written opinion, the court rejected both -- as well as other -- arguments and denied defendant's petition.

The PCR court found defendant did not identify what discovery his counsel failed to provide and, thus, it was unable to determine if counsel had been ineffective under the Strickland prongs.

As for the indictment, defendant argued the prosecutor presented all indictments to the same grand jury rather than present each offense to separate grand juries. Defendant argued such practice could have suggested to the grand jury defendant

[2] Defendant does not specify whether counsel failed to provide him with all discovery before his initial plea or his plea following his appeal and remand, but we assume it was the latter.

was likely culpable if he had so many charges brought against him, not to mention the certain persons not to have weapons charge revealed he had a prior conviction. The PCR court rejected defendant's argument on the ground he failed to provide the transcript of the grand jury proceeding.

On appeal, defendant claims the court's ruling on discovery was erroneous, but does not address the fact he did not identify for the PCR court (or on appeal) the discovery counsel failed to provide and how such discovery would have made a difference to his decision to plead guilty. Defendant's contention plea counsel failed to provide him the discovery necessary to have enabled him to make an informed decision on whether to plead guilty does not merit further discussion. R. 2:11-3(e)(2).

As for the indictment, defendant contends it was not necessary for the PCR court to review the transcripts of the grand jury proceeding. He argues once the PCR court was made aware all charges were presented to one grand jury panel, the court knew defendant was prejudiced in the manner he alleges.

This argument is barred by Rule 3:22-4(a). Defendant had ample opportunity to challenge the indictment in his direct appeal and did not do so, preventing review of the validity of the indictment in the appropriate proceeding. We discern no fundamental injustice to defendant in barring that claim now.

Finally, defendant argues PCR counsel was ineffective for failing to provide the transcript of the grand jury proceeding to the PCR court. In light of our disposition, we need not reach this claim.

Accordingly, we affirm the denial of the PCR petition arising out of the Middlesex matter.

Affirmed.