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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1059-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KARRIEM SANCHEZ, a/k/a HAKEEM
BANKS, KAREEM BANKS, KARIEEM BLEY,
KARRIEM SIMMONS, TERRANCE SIMMONS,
NAJIE SMITH and HAKEEM WILLIAMS,

Defendant-Appellant.

Submitted February 12, 2018 – Decided March 6, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No.
10-03-0788.

Joseph E. Krakora, Public Defender, attorney
for appellant (Anthony J. Vecchio, Designated
Counsel, on the brief).

Robert D. Laurino, Acting Essex County
Prosecutor, attorney for respondent (Stephen
A. Pogany, Special Deputy Attorney
General/Acting Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

Defendant Karriem Sanchez appeals from a September 7, 2016 order denying his petition for post-conviction relief ("PCR") following an evidentiary hearing. We affirm.

We incorporate by reference the facts and procedural history set forth in our prior unpublished opinion. State v. Sanchez, No. A-2991-11 (App. Div. Dec 3, 2013) (slip op. at 1-6). Briefly, following a jury trial, defendant was convicted of second-degree conspiracy to possess with intent to distribute heroin, N.J.S.A. 2C:5-2 (count one); third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1) (count two); third-degree possession of heroin with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3) (count three); third-degree possession of heroin with intent to distribute within 1000 feet of school property, N.J.S.A. 2C:35-7 (count four); and second-degree possession of heroin with intent to distribute within 500 feet of a public housing facility, N.J.S.A. 2C:35-7.1 (count five). After merging counts one through four with count five, the trial judge sentenced defendant to a sixteen-year term of imprisonment, with eight years of parole ineligibility pursuant to the Graves Act, N.J.S.A. 2C:43-6(f).

Defendant's conviction was upheld on direct appeal. Sanchez, slip op. at 28. However, we remanded for resentencing within the

second-degree range.¹ Ibid. The Supreme Court thereafter denied certification. State v. Sanchez, 218 N.J. 274 (2014).

Defendant then filed the present PCR petition, alleging ineffective assistance of his trial counsel. In essence, defendant alleged his attorney failed to: file pre-trial motions, including a motion to dismiss the indictment, a motion for severance, and a motion for the personnel file of the lead detective; raise a meritorious argument during the suppression hearing; investigate and prepare for trial; impeach the lead detective with his inconsistent grand jury testimony; and interview key witnesses prior to the day of the trial.

The PCR judge held a two-day evidentiary hearing in August 2016. Defendant and his former attorney testified at the hearing.

Defendant elaborated upon his perceived ineffective assistance of counsel claims. Although he advised his former trial counsel he had filed an internal affairs complaint against the lead detective, she failed to pursue an investigation or file a motion to obtain the detective's personnel file. Defendant testified further that, when his trial concluded, he conducted his own investigation while in prison and discovered an American Civil

¹ Defendant's sentence after remand is not referenced in the record.

Liberties Union complaint filed against the lead detective pertaining to the false arrest of a journalist.

During cross-examination, defendant admitted he was present in the courtroom and aware that co-defendant's counsel filed a motion to disclose the lead detective's internal affairs file. Defendant claimed he was unaware that the court denied the motion because the detective's disciplinary record pertained to the false arrest of a journalist, and not a drug crime. Moreover, trial counsel testified she had joined in co-defendant's motion for the detective's personnel file.

Defendant claimed further his trial counsel had failed to interview several witnesses until the day of trial. As a result, defendant argued they were not prepared for questions on cross-examination. In her own PCR testimony, trial counsel countered she had interviewed co-defendant Lateisha Lawrence "numerous" times during the two years prior to her testimony at trial. Counsel also testified she interviewed two other witnesses before they testified and discussed their trial preparation with defendant.

Trial counsel stated she had not filed a motion to dismiss the indictment or a motion for severance because she did not believe either motion had merit. Specifically, she did not think it was prudent to "file motions just for the sake of filing them."

On September 7, 2016, the PCR judge rendered an oral decision denying defendant's petition. This appeal followed.

On appeal, defendant raises the following points for our consideration:

DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BOTH BEFORE AND DURING HIS TRIAL.

POINT I

Trial counsel failed to conduct an adequate pre-trial investigation.

POINT II

Trial counsel's performance during the suppression hearing constituted ineffective assistance of counsel.

POINT III

Trial counsel was ineffective for failing to file a motion to dismiss the indictment.

POINT IV

Trial counsel failed to effectively cross-examine [the lead detective] at trial.

Our review of a PCR claim after a court has held an evidentiary hearing "is necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013); see also State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014) ("If a court has conducted an evidentiary hearing on a petition for PCR, we necessarily defer to the trial court's factual findings.").

Where an evidentiary hearing has been held, we should not disturb "the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting Nash, 212 N.J. at 540). We review any legal conclusions of the trial court de novo. Nash, 212 N.J. at 540-41; State v. Harris, 181 N.J. 391, 419 (2004).

"[A] defendant asserting ineffective assistance of counsel on PCR bears the burden of proving his or her right to relief by a preponderance of the evidence." State v. Gaitan, 209 N.J. 339, 350 (2012). A defendant must prove counsel's performance was deficient; it must be demonstrated that counsel's handling of the matter "fell below an objective standard of reasonableness" and that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey).

A defendant must also prove counsel's "deficient performance prejudiced the defense." Strickland, 466 U.S. at 687. Prejudice is established by showing a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. Thus, petitioner must establish that counsel's performance was deficient and petitioner

suffered prejudice in order to obtain a reversal of the challenged conviction. Id. at 687; Fritz, 105 N.J. at 52.

We have carefully considered defendant's arguments in light of the applicable law, and conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons stated by the PCR judge in his thorough oral opinion of September 7, 2016. We add only the following comments.

The PCR judge found defendant's former trial counsel credible, while finding defendant's testimony, by contrast, was "not credible or reliable." Whereas counsel's testimony was "candid, consistent, exact, and unwavering, both on direct and cross[-]examination," defendant "was eager and more than willing to tell his story on direct examination[, but h]e was not as cooperative on cross[-]examination." Specifically, the PCR judge "sensed a specific hesitation and/or reluctance to answer at times during the cross [-]examination. Many of his answers were argumentative and often times not responsive or repetitive, or creat[ed] serious doubts as to his credibility and reliability."

Conversely, not only did defense counsel "demonstrate[] a good recollection of the facts and circumstances surrounding her representation of [defendant, but also she] did not attempt to avoid any questions, that all questions both on direct and

cross[-]examination were answered directly, fully, confidently and without equivocation, in a non-argumentative or confrontational matter." Nor did the PCR judge sense "any attempt [by counsel] to deceive or otherwise misrepresent the facts in any way."

In applying the pertinent law, the PCR judge rejected each of defendant's arguments. Initially, the judge found defendant "failed to provide any credible evidence to establish '[a] factual predicate that would make it reasonably likely that [the lead detective's personnel] file [would] bear . . . fruit[,] and that the quest for its content[s was] not merely a desperate grasping at [] straw[s].'" (quoting State v. Harris, 316 N.J. Super. 384, 398 (App. Div. 1998)). In addition, the judge noted there was no evidence the file would have revealed "bad acts" that would be relevant to his case.

Further, defendant did not produce any credible evidence that trial counsel failed to investigate or interview witnesses. On the contrary, the judge credited counsel's testimony that she met with the witnesses several times.

The PCR judge also found defendant's argument that trial counsel failed to argue effectively during the suppression motion was procedurally barred pursuant to Rule 3:22-5, because a panel of this court has already upheld the search of defendant's person on direct appeal. Sanchez, slip op. 12-14.

While we disagree that defendant's claims were barred procedurally,² the trial judge astutely rejected defendant's claim on the merits, giving due deference to trial counsel's trial strategy. To support his decision, the trial court cited State v. Biegenwald, 126 N.J. 1, 56 (1991) (recognizing "[i]n matters of trial strategy, we accord great deference to the decisions of counsel.").

The PCR judge found further there was "more than sufficient evidence" to sustain the indictment. Citing our decision in State v. Fleischman, 383 N.J. Super. 396, 398 (App. Div. 2006), the judge found an indictment "'is presumed valid' and all inferences of fact[] upon which the indictment is based must be viewed in favor of the state." See also, State v. Nicholson, 451 N.J. Super. 534, 541 (App. Div. 2017) (quoting State v. Feliciano, 224 N.J. 351, 380 (2016)). Therefore, he concluded the motion to dismiss

² In his PCR petition, defendant argued trial counsel was ineffective for failing to argue during the suppression hearing the "pat down" search was illegal because the lead detective did not immediately know whether the "unusual bulge" was a weapon. On direct appeal, we only considered and upheld the legality of the search based on the evidence presented. We did not consider whether counsel was effective in her questioning during the suppression hearing. Thus, defendant's ineffective assistance of counsel claim is not procedurally barred pursuant to Rule 3:22-5; see also State v. McQuaid, 147 N.J. 464, 484 (1997) (recognizing "claims that differ from those asserted below will be heard on PCR.").

the indictment would have been fruitless and defendant suffered no prejudice.

Regarding defendant's argument that counsel failed to file a motion for severance, the PCR judge found "joinder of defendant was clearly proper." Citing Rule 3:7-7, he recognized, "all defendants are alleged to have participated in the same transaction[,] . . . the evidence against all defendants is largely the same[,] . . . [and] the defenses and/or contentions of each defendant[] does not prejudice one petitioner against the other." See also, State v. Robinson, 253 N.J. Super. 346, 364 (App. Div. 1992); State v. Brown, 170 N.J. 138, 160 (2001).

Finally, the PCR judge found any inconsistency between the lead detective's trial testimony and grand jury testimony to be "d[e] minim[i]s" and "inconsequential." Referencing the second prong of Strickland, the judge found this was not "sufficient to produce a different result at trial." Strickland, 445 U.S. at 694; Fritz, 105 N.J. at 52-53.

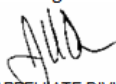
In sum, the trial judge found defendant's arguments were "self-serving, speculative, and conclusory." As such, defendant "failed to provide any credible evidence as to any of the claims alleged in support of [his] application for ineffective assistance of counsel, to show and/or prove that [c]ounsel's performance

'fell below an objective standard of reasonableness.' Strickland, 446 U.S. at 687-88; [see] also, Fritz, 105 N.J. at 67."

We see no reason to disturb the PCR judge's factual and credibility findings. His sound assessment of the weight and credibility of the evidence commands our deference. See State v. Robinson, 200 N.J. 1, 15 (2009).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION