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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1969-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRAHEEM MILLER,

Defendant-Appellant.

Submitted May 14, 2018 – Decided May 23, 2018

Before Judges Sabatino and Rose.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
12-03-0666.

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

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Patrick D. Isbill,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Braheem Miller appeals from the trial court's
October 19, 2016 order denying his petition for post-conviction

relief ("PCR"). He argues the trial court should have held an evidentiary hearing concerning his trial attorney's failure to: (1) disqualify himself based on an alleged conflict of interest; (2) advance an argument to suppress defendant's statement; and (3) raise a disparate sentence argument. We affirm.

Defendant and two co-defendants were indicted on charges of aggravated manslaughter, murder, and weapons offenses arising out of the fatal stabbing of the victim in April 2011.

On January 4, 2013, in accordance with a negotiated plea agreement, defendant pled guilty to aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1). During the plea proceeding, defendant admitted that he and his co-defendants had stabbed the victim repeatedly in the abdomen until he died.

When he appeared for sentencing on June 14, 2013, defendant requested permission to withdraw his guilty plea, on the grounds that the victim had allegedly provoked the attack and defendant had not caused the death. See State v. Slater, 198 N.J. 145, 157-58 (2009). The sentencing judge denied the motion, noting that a video recording of the crime clearly showed that the victim had not provoked defendant. The judge further noted that, at the earlier plea proceeding, defendant had not only admitted to stabbing the victim, but had also illustrated the manner in which he had done so, thus negating any colorable claim of innocence.

Consistent with the terms of the plea agreement, the court imposed a twenty-five-year custodial sentence, subject to an eighty-five-percent parole bar under the No Early Release Act, N.J.S.A. 2C:43-7.2. It entered a corresponding judgment of conviction.

On direct appeal, defendant challenged his sentence on the basis that his co-defendants had received lesser terms of twenty-two and nineteen years' imprisonment, respectively. We affirmed the sentence. Sentencing Oral Argument Order, State v. Miller, No. A-0379-13 (App. Div. Oct. 27, 2014).

Defendant then filed a petition for PCR. His petition claimed the victim was the aggressor, and the trial court had imposed a disparate sentence in comparison to his co-defendants. Defendant further contended his former trial attorney was ineffective because he had failed to: disqualify himself on the ground that the victim's mother was employed by the Office of the Public Defender; take measures to bar defendant's untruthful confession; advise defendant that he would receive the same sentence for aggravated manslaughter as for murder; and challenge his sentence as disproportionately longer than his co-defendants' sentences.

On October 19, 2016, Judge Kathleen M. Delaney denied defendant's PCR petition without the need for an evidentiary hearing. In her oral opinion, Judge Delaney found that defendant's

conflict of interest claim amounted to nothing more than "bald assertions" without supporting proof. In addition, the judge rejected defendant's claim that his attorney had failed to take measures to exclude the allegedly untruthful confession. In fact, counsel had filed a motion to suppress defendant's statement. See Miranda v. Arizona, 384 U.S. 436 (1966). That motion was pending at the time of the plea proceeding. The judge presiding over that proceeding had expressly advised defendant that, by entering the guilty plea, he was waiving a decision on the motion. In response, defendant stated that he understood his right.

The PCR judge further noted that defendant's argument that he was not advised about the aggregate sentence he faced was belied by the transcript of the Slater hearing where the court reminded defendant that he faced "close to almost a double life sentence," had he gone to trial on each of the six matters on multiple indictments that were resolved through his guilty plea. Finally, the PCR judge found the disparate sentencing argument baseless because defendant had an extensive prior criminal record, unlike his co-defendants, implicated himself, and had violated probation when he stabbed the victim.

On appeal, defendant presents the following point in his brief:

DEFENDANT IS ENTITLED TO AN EVIDENTIARY
HEARING ON HIS CLAIM THAT HIS PLEA COUNSEL
RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL.

A court should grant an evidentiary hearing on a PCR petition only "upon the establishment of a prima facie case in support of" the petition. Such a prima facie showing requires a demonstration of "material issues of disputed fact that cannot be resolved" on the existing record, and that "an evidentiary hearing is necessary to resolve the claims for relief." R. 3:22-10(b). "To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits." Ibid.; State v. Porter, 216 N.J. 343, 355 (2013); State v. Preciose, 129 N.J. 451, 462-63 (1992). "A court shall not grant an evidentiary hearing . . . if the defendant's allegations are too vague, conclusory or speculative" R. 3:22-10(e)(2).

In order to present a prima facie case of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient under an objective standard of reasonableness, and that the deficiency caused prejudice, or a result that would not have occurred had counsel been effective. Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); State v. Fritz, 105 N.J. 42, 52 (1987). There is "a strong presumption

that counsel's conduct [fell] within the wide range of reasonable professional assistance" and amounted to sound trial strategy. Fritz, 105 N.J. at 52 (quoting Strickland, 466 U.S. at 688-89).

Substantially for the cogent reasons expressed by Judge Delaney, defendant's PCR petition was properly denied without holding an evidentiary hearing. Defendant failed to establish a prima facie case of ineffective assistance of counsel, and no issue of material fact was in dispute.

Defendant's conflict of interest claim was based on speculation without any supporting affidavit substantiating a conflict. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) (explaining that a defendant must support facts which form the basis for a PCR petition with "affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification").

As the PCR judge rightly noted, defendant's argument that his former counsel had failed to pursue a motion to suppress his statement was belied by the record. His claim that his counsel failed to pursue a disparate sentence argument is procedurally barred under Rule 3:22-5 as an issue previously litigated, and, moreover, has no substantive merit in light of his comparatively more extensive criminal record.

The balance of defendant's contentions lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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



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