SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2006-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DERRICK K. PARRISH,

Defendant-Appellant.

Submitted March 15, 2018 – Decided April 2, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 10-03-0449.

Joseph E. Krakora, Public Defender, attorney for appellant (Andrew R. Burroughs, Designated Counsel, on the brief).

Joseph D. Coronato, Ocean County Prosecutor, attorney for respondent (Samuel J. Marzarella, Chief Appellate Attorney, of counsel; John C. Tassini, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant appeals from the November 16, 2016 Law Division order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

We incorporate herein the procedural history and facts set forth in our decision in defendant's appeal from his convictions and sentence for multiple drug offenses[1] arising from the execution of a search warrant in connection with a narcotics investigation targeting defendant. State v. Parrish, No. A-3343-12 (App. Div. Apr. 24, 2015) (slip op. at 1), certif. denied, 222 N.J. 19 (2015). The trial court sentenced defendant to an aggregate term of sixteen years with an eight-year period of parole ineligibility. Ibid. In our opinion, we affirmed defendant's convictions, but remanded the matter to the trial court for the limited purpose of correcting the judgments of conviction to reflect the merger of several offenses. Id. at 20.

Defendant then filed a petition for PCR contending, among other things, that his trial attorney was ineffective by failing to (1) adequately investigate the case; (2) call him and his girlfriend as witnesses at the Miranda[2] hearing; and (3) file a

[1] After the jury convicted defendant on nine counts, he pled guilty to two additional counts charged in a separate indictment. Parrish, (slip op. at 1).

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

motion to dismiss the indictment because the State presented its case "to the grand jury through [defendant's] alleged drug dealing with a confidential informant."

In a thorough written opinion, Judge James M. Blaney considered these contentions and denied defendant's petition. The judge concluded that defendant failed to satisfy the two-prong test of Strickland v. Washington, 466 U.S. 668, 687 (1984), which requires a showing that trial counsel's performance was deficient and that, but for the deficient performance, the result would have been different.

The judge found that defendant's contentions were nothing more than "bald assertions" and were not supported by any competent evidence such as certifications from defendant or his girlfriend as to what testimony they would have provided if they had been called as witnesses at the Miranda hearing or at trial. Therefore, defendant was unable to establish a prima facie case of ineffective assistance of counsel and, accordingly, an evidentiary hearing was not necessary.

The judge also concluded there was more than enough evidence, including the information provided by the confidential informant, to support the search warrant that led the police to the drugs in defendant's apartment. Thus, a motion to suppress the evidence seized in the search that formed the basis for defendant's

subsequent indictment, would not have been successful. This appeal followed.

On appeal, defendant raises the following contentions:

> POINT I
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> DEFENSE COUNSEL FAILED TO ADEQUATELY INVESTIGATE AND INFORM DEFENDANT ABOUT THE CASE.
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> POINT II
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> DEFENSE COUNSEL WAS INEFFECTIVE AT THE MIRANDA HEARING.
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> POINT III
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> DEFENSE COUNSEL FAILED TO FILE A MOTION TO DISMISS THE INDICTMENT.
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> POINT IV
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> AS THERE ARE GENUINE ISSUES OF MATERIAL FACTS IN DISPUTE, AN EVIDENTIARY HEARING WAS REQUIRED.

When petitioning for PCR, the defendant must establish, by a preponderance of the credible evidence, that he or she is entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013); State v. Preciose, 129 N.J. 451, 459 (1992). To sustain that burden, the defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing and the defendant "must do

more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). In addition, a defendant must present facts "supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Ibid. Accordingly, trial courts should grant evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland, 466 U.S. at 687; State v. Fritz, 105 N.J. 42, 58 (1987). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronic, 466 U.S. 648, 659 n.26 (1984). Moreover, such acts or omissions of counsel must amount to more than mere tactical strategy. Strickland, 466 U.S. at 689.

We have considered defendant's contentions in light of the record and applicable legal principles and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Blaney in his well-reasoned written opinion.

Affirmed.