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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-3130-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL J. RAMSEY,

Defendant-Appellant.

Submitted March 15, 2018 – Decided April 5, 2018

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey,
Law Division, Somerset County, Indictment No.
06-10-0853.

Joseph E. Krakora, Public Defender, attorney
for appellant (Michele A. Adubato, Designated
Counsel, on the brief).

Michael H. Robertson, Somerset County
Prosecutor, attorney for respondent (Natacha
Despinos Peavey, Assistant Prosecutor, of
counsel and on the brief).

PER CURIAM

This matter returns to us after remand proceedings directed by our previous opinion. State v. Ramsey, No. A-2635-14 (App. Div. June 22, 2016) (slip op.). In compliance with our instructions, Judge Robert A. Ballard, Jr. canvassed the record developed at the two-day evidentiary hearing conducted by a prior judge. On December 22, 2016, the judge rendered a comprehensive and thoughtful written opinion concluding that defendant failed to establish he received ineffective assistance of counsel from his trial counsel. The judge memorialized his decision in a December 23, 2016 order denying defendant's petition for post-conviction relief (PCR).

Defendant now appeals from the December 23, 2016 order. We affirm.

We incorporate herein the procedural history and facts set forth in our prior opinion. Ramsey, slip op. at 1-6. The following facts are pertinent to the present appeal.

Following a jury trial, defendant was convicted of first-degree murder, N.J.S.A. 2C:11-3(a)(1) or (2), and second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a). Id. at 1. The judge sentenced defendant to life in prison with a thirty-year period of parole ineligibility. Ibid. On

direct appeal, we affirmed defendant's conviction,¹ but remanded to correct the period of parole ineligibility in accordance with the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Ibid. The Supreme Court denied certification. Id. at 2. On remand, the judge resentenced defendant to life in prison subject to an 85% period of parole ineligibility pursuant to NERA. Ibid. Thus, defendant was required to serve 63.75 years, rather than thirty, before becoming eligible for parole. Ibid.

Defendant filed a PCR petition, arguing in part that his trial counsel was ineffective for misadvising him that thirty years was the maximum period of parole ineligibility he faced if convicted on the murder charge and, but for counsel's deficiency, he would have pled guilty in return for a lesser sentence. Ibid. A trial judge conducted an evidentiary hearing at which defendant, defendant's trial counsel, and two of defendant's prior attorneys testified. The judge who conducted the hearing was later replaced by a second judge, who reviewed the transcript and denied defendant's PCR petition. Id. at 4.

Unfortunately, the judge "made no factual findings on defendant's claims that trial counsel misadvised him about the period of parole ineligibility" he faced on the murder charge.

¹ See State v. Ramsey, 415 N.J. Super. 257 (App. Div. 2010), certif. denied, 205 N.J. 77 (2011).

Id. at 5. Accordingly, we remanded "for the court to make the required factual findings based on the entire record." Id. at 8.

On remand, the matter was assigned to Judge Ballard, who rendered a twenty-two page written decision denying defendant's PCR petition. Defendant alleged that his attorney never advised him that a sentence of life imprisonment was subject to NERA and, therefore, he claimed he was unaware that he would have to serve 63.75 years before becoming eligible for parole. Defendant also noted that the pre-trial order indicated that the maximum parole ineligibility term was thirty years, and that the trial judge referred to that number when discussing the possible sentence during court proceedings. Defendant asserted he would have accepted the State's offer to recommend a lesser term if he pled guilty had he known he might be required to spend over sixty years in prison if he received a life sentence after trial.

Judge Ballard rejected these arguments and found 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. Turning to the first Strickland prong, Judge Ballard determined that defendant's claim of ignorance of the maximum parole ineligibility term was belied by the cogent testimony of his trial

counsel, Robert Gerage, Esq. Gerage testified that he specifically advised defendant that "when you get a life prison sentence in New Jersey, the only way you leave prison is feet first. You're going away for life." Gerage also told defendant that he would have to serve 63.75 years in prison if he received a life sentence. Because Gerage correctly advised defendant of his full sentencing exposure if he went to trial, Judge Ballard concluded that he did not provide ineffective assistance to defendant.

The judge also found that defendant did not satisfy the second Strickland prong because he could not show that even if Gerage had provided incorrect advice, the result would have been different. In this regard, Gerage testified he repeatedly advised defendant that he should accept a plea offer rather than face the prospect of a life sentence. However, defendant maintained he was innocent of the charges. While different plea offers ranging between twenty to thirty years were discussed by Gerage and defendant, defendant continued to insist he did not commit the offenses involved in this case.

Judge Ballard observed that the record was "replete with [d]efendant's claims of innocence." In view of defendant's "continued and relentless belief in his innocence[,]" the judge concluded he would not have accepted a plea offer from the State

even if Gerage had misadvised him of the maximum parole ineligibility period he faced. This appeal followed.

On appeal, defendant raises the following contention:

POINT I

SINCE . . . DEFENDANT WAS MISINFORMED BY THE TRIAL COURT, PROSECUTOR AND DEFENSE COUNSEL OF THE MANDATORY PERIOD OF PAROLE INELIGIBILITY FOR A LIFE SENTENCE AND AS A RESULT, REJECTED A PLEA OFFER, THE DENIAL OF HIS PETITION FOR [PCR] WAS ERROR.

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).

To establish a prima facie claim of ineffective assistance of counsel, the defendant

must satisfy two prongs. First, he must demonstrate that counsel made errors "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." An attorney's representation is deficient when it "[falls] below an objective standard of reasonableness."

Second, a defendant "must show that the deficient performance prejudiced the defense." A defendant will be prejudiced when

counsel's errors are sufficiently serious to deny him "a fair trial." The prejudice standard is met if there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." A "reasonable probability" simply means a "probability sufficient to undermine confidence in the outcome" of the proceeding.

[State v. O'Neil, 219 N.J. 598, 611 (alteration in original) (quoting Strickland, 466 U.S. at 687-88, 694.)]

When a guilty plea is involved,

[the Court has] explained that "[t]o set aside a guilty plea based on ineffective assistance of counsel, a defendant must show that (i) counsel's assistance was not 'within the range of competence demanded of attorneys in criminal cases;' and (ii) 'that 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. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (last two alterations in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)).]

"[I]n order to establish a prima facie claim, [the defendant] 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." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). We review a judge's decision to deny a PCR petition for abuse of discretion. Preciose, 129 N.J. at 462.

We have considered defendant's contention in light of the record and applicable legal principles and conclude it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We discern no abuse of discretion in the denial of defendant's PCR petition following an evidentiary hearing, and affirm substantially for the reasons set forth in Judge Ballard's thorough written opinion. We are satisfied that defendant received the effective assistance of counsel in connection with the plea negotiations.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION