

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3196-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

J.J.W.,

Defendant-Appellant.

Submitted March 20, 2018 – Decided April 17, 2018

Before Judges Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Accusation
No. 10-12-1283 and Indictment No. 11-05-0620.

Joseph E. Krakora, Public Defender, attorney
for appellant (Frank M. Gennaro, Designated
Counsel, on the brief).

Scott A. Coffina, Burlington County Prosecutor,
attorney for respondent (Alexis R. Agre,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant appeals from the January 20, 2017 Law Division order denying his petition for post-conviction relief (PCR). We affirm.

This appeal concerns two separate convictions based upon guilty pleas entered by defendant. First, he pled guilty to third-degree receiving stolen property, N.J.S.A. 2C:20-7(a). During the plea hearing, he acknowledged possessing an Avis rental car he knew had been stolen. Second, he pled guilty to third-degree aggravated criminal sexual contact, N.J.S.A. 2C:14-3(a). The State offered the plea agreement in exchange for the dismissal of nine other charges related to an alleged sexual assault. In pleading guilty, defendant acknowledged taking the victim to a motel room, preventing her from leaving, and touching her breasts and buttocks for his sexual gratification.

The trial court sentenced defendant in accordance with the plea agreement to five years in prison for the sexual contact offense and one year of probation for the receiving stolen property offense. In connection with the sexual contact conviction, the court also sentenced defendant to Megan's Law requirements and parole supervision for life (PSL). Defendant did not file a direct appeal.

On February 10, 2016, defendant filed his petition for PCR. Defendant sought to withdraw his guilty pleas and to set aside his

convictions, asserting multiple arguments of ineffective assistance of trial counsel. On January 20, 2017, the PCR court denied defendant's petition without an evidentiary hearing, finding defendant's arguments meritless. This appeal followed, with defendant presenting the following arguments:

POINT ONE

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF WITHOUT AFFORDING DEFENDANT AN EVIDENTIARY HEARING[.]

- A. Failure to Advise of Specifics of PSL
- B. Counsel's Failure to Investigate
- C. Failure to Investigate the Entrapment Defense

Following our review of the record and the applicable law, we conclude defendant's appeal lacks merit. We affirm substantially for the reasons set forth by Judge Jeanne T. Covert in her cogent written opinion. We add the following comments.

To establish a prima facie case of ineffective assistance of counsel, defendant must satisfy the two-prong test articulated in Strickland v. Washington, 466 U.S. 668, 687 (1984), which our Supreme Court adopted in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show . . . counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Fritz, 105 N.J. at 52

(quoting Strickland, 466 U.S. at 687). Defendant must then show counsel's deficient performance prejudiced the defense. Ibid. To show prejudice, defendant must establish by "a reasonable probability" that the deficient performance "materially contributed to defendant's conviction" Id. at 58.

In his PCR petition, defendant first claims his attorney provided ineffective assistance by failing to advise him of the specifics of PSL. Defendant contends his counsel failed to advise him that if he was charged with a new offense, the court could sentence him to prison before convicting him of the new charge. Defendant certified that had he known he would face imprisonment for being charged with an offense before being convicted, he would not have agreed to the plea agreement. However, defendant signed plea forms indicating he knew he was subject to PSL and he faced imprisonment for a parole violation. Defendant also testified under oath that he signed all of the plea forms, understood them, and reviewed them with his attorney. Accordingly, we agree with the PCR court that defendant failed to show trial counsel was deficient.

Defendant next claims his attorney provided ineffective assistance by failing to adequately investigate his case. Defendant contends he is innocent of both aggravated sexual contact and receiving stolen property. Defendant contends he told his

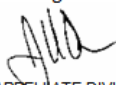
counsel the sexual contact was consensual, but counsel "kept pushing [him] to accept a plea." However, defendant fails to raise any specific facts supporting his innocence or any particular facts counsel should have investigated. When a defendant wishes to withdraw a guilty plea based on a claim of innocence, the court must "consider whether a defendant's assertion of innocence is more than a blanket, bald statement and rests instead on particular, plausible facts." State v. Slater, 198 N.J. 145, 159 (2009). We agree with the PCR court that defendant fails to point to particular facts, and his claims of innocence are no more than bald assertions.

Defendant next claims his attorney provided ineffective assistance by failing to investigate an entrapment defense. Defendant contends the police entrapped him by releasing to him a car they knew was stolen. Entrapment "can arise whenever a defendant introduces evidence of the government's involvement in the crime through initiation, solicitation, or active participation." State v. Johnson, 127 N.J. 458, 464 (1992) (citation omitted). Here, the record reflects no evidence the police knew the car released to defendant was stolen. We agree with the PCR court that an entrapment defense would not have succeeded; therefore, counsel was not ineffective in failing to investigate or raise it.

Defendant further contends the PCR court erred by ruling on his petition without an evidentiary hearing. However, this matter did not require a hearing because defendant failed to present a prima facie case of ineffective assistance of counsel. See R. 3:22-10(b); see also State v. Porter, 216 N.J. 343, 354 (2013) (citing State v. Preciose, 129 N.J. 451, 462-63 (1992)).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION