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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
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-4060-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTONIO BELL-WINTERS, a/k/a  
ANTONIO WINTERS,

Defendant-Appellant.

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Submitted January 8, 2018 – Decided January 22, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey,  
Law Division, Atlantic County, Indictment No.  
07-03-0756.

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

Damon G. Tyner, Atlantic County Prosecutor,  
attorney for respondent (John J. Santoliquido,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

This post-conviction relief ("PCR") matter returns from the  
trial court, following an evidentiary hearing we ordered in our

2015 unpublished opinion. State v. Bell-Winters, No. A-2843-13 (App. Div. June 5, 2015). After considering the testimony and other evidence adduced at that evidentiary hearing, the court concluded that defendant Antonio Bell-Winters had not met his burden of demonstrating his former trial attorney deprived him of the effective assistance of counsel. Defendant now appeals that determination. We affirm.

We incorporate by reference the background detailed in our prior opinion. Briefly summarized, defendant pled guilty in 2008 to aggravated manslaughter. The record shows that defendant fatally shot the victim, following an argument about his dating relationship with the victim's former girlfriend.

The State initially charged defendant with murder. Pursuant to a negotiated plea agreement, the murder charge was downgraded to first-degree aggravated manslaughter, a crime which calls for a sentencing range of ten to thirty years in prison. N.J.S.A. 2C:11-4(c). The sentence would be subject to the minimum parole ineligibility period mandated by the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2.

As specified in the written plea agreement, the State agreed to recommend to the court that defendant's prison term not exceed twenty-two years. Defendant, meanwhile, would be free to argue at sentencing for the minimum term of ten years. Ultimately, the

judge at sentencing imposed a twenty-year term, subject to NERA parole ineligibility requirements.

In his PCR application, defendant contends his trial attorney had advised him and his mother before sentencing that he would not receive a custodial term of more than fifteen or sixteen years, because the judge had reportedly said at a conference with counsel that he was intending to impose a sentence "in the mid range." The parties dispute what was meant by the word "mid range" in this context. Defendant insists that it signified the expected sentence would be at approximately the midpoint of the ten-year statutory minimum and the negotiated plea cap of twenty-two years, i.e., approximately sixteen years. The State conversely maintains the sentence was expected to be around the midpoint between the ten-year statutory minimum and the thirty-year statutory maximum for aggravated manslaughter, i.e., twenty years, which is what the sentencing judge imposed.

Although the trial court initially denied defendant's PCR petition without an evidentiary hearing, we directed the court to conduct such a hearing on remand, in order to address the factual dispute concerning the "midpoint" issue. Bell-Winters, slip op. at 8-10. We further asked the trial court to explore whether, but for trial counsel's alleged error in forecasting the anticipated sentence, defendant would have been likely to have rejected the

plea offer and risked an even greater exposure at trial. Bell-Winters, at 9.

Judge Michael J. Blee, the PCR judge on remand,<sup>1</sup> conducted two days of evidentiary hearings in January and February 2016. Defendant's former trial attorney and defendant himself testified.

Trial counsel acknowledged in his testimony that he had told defendant that the court's likely sentence was sixteen years or less. However, counsel also maintained he told defendant the judge would nevertheless have the discretion to impose a sentence of up to twenty-two years. Judge Blee found the attorney's testimony on these points "honest, non-evasive, and responsive."

Defendant testified that his trial counsel advised him the likely sentence would be fifteen to sixteen years. Judge Blee found defendant credible on that specific point. However, the judge did not find defendant credible in respect of his claim that, in retrospect, he would not have agreed to the plea offer if he had known that NERA would require him to serve actual custodial time of approximately eighteen years of a twenty-year sentence.

Notably, when defendant was asked at the evidentiary hearing if he would have gone to trial if he had known he was going to

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<sup>1</sup> A different judge had previously dismissed the PCR petition without a hearing.

receive a twenty-year sentence, defendant testified ". . . honestly. I don't know. I would have had to discuss it with my family." That equivocal testimony conflicted with the certification defendant previously submitted in support of his PCR petition, in which he insisted that he would not have accepted such a plea bargain.

As Judge Blee pointed out, if the State had not entered into the plea agreement, defendant would have faced up to a life sentence if he were convicted of first-degree murder. The judge was unpersuaded by defendant's present contention that he would have had a potentially viable argument at trial to be found guilty by a jury of only passion/provocation manslaughter. As the judge noted, that contention is undermined by the State's evidence of defendant's argument with the victim earlier in the day of the shooting, defendant's agreement to meet the victim later that same day, defendant's arrival at the scene in possession of a handgun, and other facets in the record.

On the whole, Judge Blee concluded from the proofs at the hearing that defendant was "completely aware of the consequences" of his guilty plea, that his counsel had not been deficient, and that it was not credible that defendant would have rejected the plea if he had better appreciated his true sentencing exposure.

Defendant now appeals, arguing the following points in his brief:

POINT I

THE TRIAL COURT MISAPPLIED THE LAW IN DENYING THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF AFTER AN EVIDENTIARY HEARING WAS HELD TO ADDRESS HIS CONTENTION THAT HE WAS PROVIDED WITH INADEQUATE ASSISTANCE OF PLEA COUNSEL IN PLEA NEGOTIATIONS.

POINT II

THE TRIAL COURT MISAPPLIED THE LAW IN DENYING THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF AS IT WAS REASONABLY PROBABLE HE WOULD HAVE REJECTED THE PLEA AND PROCEEDED TO TRIAL ON ALL CHARGES.

We have duly considered these arguments in light of the record, the applicable law, and the trial court's credibility findings. Having done so, we affirm the denial of defendant's PCR petition, substantially for the sound reasons expressed in Judge Blee's post-hearing written decision dated March 4, 2016.

Only a few comments are warranted. Defendant bore the burden at the evidentiary hearing of establishing the two prongs of ineffective assistance of his former counsel: (1) deficient performance; and (2) actual prejudice caused by counsel's errors or omissions. Strickland v. Washington, 466 U.S. 668, 690-92 (1984). We accept Judge Blee's well-reasoned determination that defendant proved neither of these two required elements.

As an appellate court considering a post-hearing PCR denial, our role "is necessarily deferential to [the trial] court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013). Applying that deference here, we have no hesitation in upholding Judge Blee's factual findings, all of which have ample support in the record.

In addition, we reject defendant's claim that the judge misapplied the law. To the contrary, our de novo review of the judge's legal conclusions, id. at 540-41, reveal them to be unassailable. Neither prong of the well-established legal standard under Strickland was met here.

In sum, the evidentiary hearing that defendant sought and received provides no basis to set aside his guilty plea, nor his conviction and sentence. We therefore uphold the PCR judge's ruling.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION