SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4774-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAQUIL K. CLARK, a/k/a RAPHAEL BLAKENEY, JOEY BLAKENEY, JOEY RALPH, RAFAEL BLAKENEY, RAPLAEL BLAKENEY, and RANDY CLARK,

Defendant-Appellant.

Submitted November 8, 2017 – Decided January 10, 2018

Before Judges Yannotti and Carroll.

On appeal from Superior Court of New Jersey, Law Division, Union County, Indictment No. 10-11-1161.

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

Thomas K. Isenhour, Acting Union County Prosecutor, attorney for respondent (N. Christine Mansour, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Raquil K. Clark appeals from an order entered by the Law Division on May 16, 2016, which denied his petition for post-conviction relief (PCR). We affirm.

Defendant was charged with second-degree robbery, N.J.S.A. 2C:15-1 (count one); and fourth-degree obstruction of the administration of law, N.J.S.A. 2C:29-1 (count two). He was subsequently tried before a jury on those charges.

At the trial, Oliver Mondragon testified that on June 3, 2010, he was working as a taxi driver in Elizabeth. Mondragon said he had a "small briefcase" on the seat beside him, which contained about $200 in cash and a logbook. Sometime after 7:00 p.m., two men hailed Mondragon and approached him from a shop on Broad Street. One of the men was short and the other man was tall. At trial, Mondragon identified defendant as the short man. The men asked Mondragon to drive them to First and Bond Streets.

The men entered the cab. Mondragon testified that based primarily upon the fact that they were heading into "a bad area," Mondragon thought his passengers "weren't good people." He locked the security divider between the front and rear seats of the cab, and then drove to First and Bond Streets. During the trip, Mondragon heard the men discussing his briefcase. When they arrived at the destination, the men exited the vehicle. Mondragon asked

defendant for the seven-dollar fare, and defendant replied, "[M]other f**ker, I don't pay nothing to you."

Mondragon opened the driver's side door and stepped out to collect the fare. He again asked defendant to pay the fare, and defendant said, "[F]**k you. . . . I'm going to punch you in your face." Mondragon said defendant raised his hand behind his ear and formed a fist, but he did not take "a full swing." Mondragon got back inside his cab because he was afraid defendant was going to hit him. He locked the doors, but failed to raise the window on the front passenger side of the vehicle.

Defendant approached the taxi and, according to Mondragon, "put half of his body inside" the open window "to go and get the briefcase." Defendant grabbed the briefcase, which was on the front seat next to Mondragon and tried to pull it out of the cab. Mondragon hung onto the briefcase, as defendant attempted to pull it away.

On redirect examination, Mondragon stated that he thought defendant was going to hit him, and he was trying to take his bag. As he was doing so, defendant shouted profanities and said he was not going to pay him anything. Defendant and Mondragon struggled over the briefcase for about five to ten minutes, after which defendant's companion persuaded defendant to release the bag and leave.

Mondragon then drove to Trumbull Street to look for a police officer. As he was parking his cab, he observed an unmarked police vehicle approaching and flagged it down. Sergeant John Maloney of the Elizabeth Police Department was one of the officers in the car. He was accompanied by Detective Robert Holongas. Another detective was nearby in an unmarked truck. Maloney later said that when he told the police that he had just been robbed, Mondragon was "excited" and "upset."

Mondragon recounted what had taken place, and the officers followed him as he drove back to First and Bond Streets to try to locate the suspects. A few minutes later, Mondragon located defendant and his companion walking near First and Bond Streets. He told the officers defendant was the man who attempted to take his briefcase. The officers detained the two men.

The officers identified themselves as police. They took physical control of the men to conduct a pat down search. According to Maloney, defendant would not put his hands on the car and "physically interfered" with the officers as they conducted their investigation. Maloney testified that

> [Defendant] was yelling that he was just going to his brother's house. He was yelling that we had no right to stop him. . . . [E]very time he was instructed to put his hands on the car he removed his hands from the car and we had to exert more pressure on him to have him stay at the car.

The officers placed handcuffs on defendant and his companion, and placed them inside Maloney's vehicle. Defendant acknowledged that he had taken a ride in the taxi and that he had refused to pay the fare. At the close of the State's case, defendant moved for a judgment of acquittal, which the judge denied. Defendant did not testify or present any witnesses. The jury returned a verdict finding defendant guilty on both counts.

Thereafter, the trial judge sentenced defendant to thirteen years of incarceration on count one, with an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The judge also imposed a concurrent sentence of eighteen months of incarceration on count two.

Defendant filed a direct appeal from the judgment of conviction entered on May 23, 2012. We affirmed defendant's conviction and sentence. State v. Clark, No. A-0216-12 (App. Div. May 14, 2014) (slip op. at 32-33). Defendant then filed a petition for certification with the Supreme Court. The Court denied the petition. State v. Clark, 220 N.J. 98 (2014).

On May 4, 2015, defendant filed a petition for PCR, alleging he had been denied the effective assistance of trial counsel. The court appointed an attorney to represent defendant. PCR counsel filed a letter brief in support of the petition. Defendant provided

the court with additional written submissions, as well as a supporting certification.

The PCR judge heard oral argument on April 15, 2016, and on May 16, 2016, placed his decision on the record, finding that defendant had not established a prima facie case of ineffective assistance of counsel, and an evidentiary hearing was not required. The judge entered an order dated May 16, 2016, denying the petition. This appeal followed.

On appeal, defendant argues: (1) the PCR court erred by denying defendant's PCR petition without affording him an evidentiary hearing; (2) trial counsel's summation irreparably prejudiced the defense; and (3) trial counsel failed to provide adequate representation because he failed to object to inadmissible and prejudicial hearsay testimony elicited by the prosecutor during the State's case.

A defendant is entitled to an evidentiary hearing on a PCR petition "only upon the establishment of a prima facie case in support of [PCR], a determination by the court that there are material issues of disputed fact that cannot be resolved by reference to the existing record, and a determination that an evidentiary hearing is necessary to resolve the claims for relief." State v. Porter, 216 N.J. 343, 354 (2013) (alteration in original) (quoting R. 3:22-10(b)). Furthermore, "[a] prima facie case is

established when a defendant demonstrates '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.'" Id. at 355 (quoting R. 3:22-10(b)).

Claims of ineffective assistance of counsel are considered under the two-part test enunciated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). The Strickland test requires a defendant to show that the performance of his attorney was deficient, and counsel's deficient performance prejudiced the defense. Strickland, 466 U.S. at 687.

To meet the first part of the Strickland test, a defendant must establish that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Ibid. The defendant must rebut the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689.

Moreover, to satisfy the second part of the Strickland test, the defendant must show "that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable." Id. at 687. The defendant must establish that there is "a reasonable probability that, but for counsel's unprofessional

errors, the result of the proceeding would have been different." Id. at 694.

As noted, defendant argues he was denied the effective assistance of trial counsel because his attorney made remarks in his summation which allegedly prejudiced the defense. According to defendant, defense counsel told the jury, "The facts are pretty clear, my client did commit a robbery or attempted a theft of that briefcase." The State maintains, however, that the statement was not transcribed correctly.

The State has furnished a corrected transcript for the February 9, 2012 proceeding, and the transcript indicates that defense counsel stated, "[t]he facts are pretty clear, my client didn't commit a robbery or attempt[] a theft of that briefcase." Thus, the record does not support defendant's claim regarding his attorney's summation.

Next, defendant argues that his attorney was ineffective because he did not object to Mondragon's statement about a comment made by the "tall person" with whom defendant shared the cab ride. As noted previously, during Mondragon's direct testimony, Mondragon described how defendant had leaned into the taxi and attempted to grab his briefcase.

Mondragon stated that he and defendant struggled over the briefcase for "some five, ten minutes." The prosecutor asked

Mondragon if defendant said anything during the struggle, and he replied, "No, . . . not then because the tall one said leave him, let it go, so he grabbed him by the hand and they took off."

Defendant argues his attorney erred by failing to object to Mondragon's unsolicited comment on the ground that what "the tall one" said to Mondragon was inadmissible hearsay. The PCR court found that even if defense counsel erred by failing to object to the remark, defendant had not shown that there was a reasonable probability the jury would have reached a different verdict if counsel had objected and the statement was stricken from the record.

The record supports the PCR court's determination. At trial, Mondragon described his struggle with defendant over the briefcase, and the threats that defendant had communicated before he attempted to take the briefcase. Mondragon's testimony provided sufficient evidence to support the jury's verdict on the robbery charge.

Defendant nevertheless argues that the statement Mondragon attributed to defendant's companion had the capacity to adversely affect his defense. Defendant claims the statement buttressed the State's case by portraying the companion as an innocent bystander who realized that defendant was attempting to commit a robbery and acted to prevent it from actually occurring. We cannot agree.

Mondragon testified that during the cab ride, he heard defendant and his companion discussing his briefcase. Thus, the jury could reasonably infer that defendant's companion was not an innocent bystander, but instead an accomplice who made no attempt to persuade defendant to release the briefcase and leave until defendant had struggled with the cab driver for about five to ten minutes.

We therefore conclude that the PCR court correctly determined that defendant failed to present a prima facie case of ineffective assistance of counsel and, as a result, was not entitled to an evidentiary hearing on his petition.

Affirmed.