

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0089-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

I. N. T.,¹

Defendant-Appellant.

Submitted April 18, 2023 – Decided July 19, 2023

Before Judges Sumners and Chase.

On appeal from the Superior Court of New Jersey, Law
Division, Salem County, Indictment No. 13-01-0024.

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

Kristin J. Telsey, Salem County Prosecutor, attorney
for respondent (David M. Galemba, Assistant
Prosecutor, of counsel and on the brief).

¹ We use initials to protect the identity of the victim of defendant's sexual assault. R. 1:38-3(c)(9).

PER CURIAM

Defendant appeals a Law Division order denying his petition for post-conviction relief (PCR) following an evidentiary hearing. We affirm.

I

In 2011, law enforcement was informed that defendant repeatedly sexually assaulted his then girlfriend's daughter, who was less than thirteen years old, between 1998 and 2001. Defendant was indicted in January 2013 on one count of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a).²

On August 6, 2013, defendant, having pled guilty to an amended charge of third-degree endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child—having sex with his girlfriend while allowing her minor daughter watch—was sentenced to two years of probation with a special condition that he serve 364 days in jail. The sentence, which was in accordance with his plea agreement, also provided that upon defendant's release, he would be subject to community supervision for life (CSL) and the requirements of Megan's Law, N.J.S.A. 2C:7-2.

² We do not discuss the details of the State's allegations regarding defendant's offense, which were fully addressed in the PCR judge's written decision. Moreover, they are not pertinent to determining this appeal.

Defendant did not file a direct appeal but, on June 4, 2019, filed a PCR petition seeking an evidentiary hearing. Defendant contended trial counsel was ineffective by failing: (1) to adequately inform him of the CSL and Megan's Law consequences of his plea; (2) to call allegedly exculpatory witnesses; and (3) to argue for a lower sentence.

Relying upon State v. Marshall, 123 N.J. 1, 158 (1991), the PCR judge, Sandra Lopez, issued a twenty-three-page written decision granting defendant's request for an evidentiary hearing. The judge explained that, considering the record "in the light most favorable to defendant," defendant set forth "a prima facie case for ineffective assistance of counsel," and there were "factual discrepancies between the record and [d]efendant's certifications" that should be resolved in a hearing to determine if the five-year time bar to file for PCR under Rule 3:22-12 should be waived.

An evidentiary hearing was held in which defendant, defendant's wife, and trial counsel testified. Judge Lopez entered an order denying defendant relief for reasons explained in a sixty-one-page written decision detailing the trial record and evidentiary hearing testimony.

The judge determined the PCR petition should be dismissed because there was no meritorious basis to relax Rule 3:22-12's requirement that the petition be

filed within five years after defendant's conviction. In accordance with Rule 3:22-12(a)(1)(A), the limitation period can be relaxed where the petition "alleges facts showing that the delay beyond said time was due to defendant's excusable neglect and that there is a reasonable probability that if the defendant's factual assertions were found to be true enforcement of the time bar would result in a fundamental injustice." The judge was not persuaded that defendant's petition was tardy due to excusable neglect or that it would be a fundamental injustice to deny consideration of the merits of his claim.

Based on the evidentiary hearing testimony, the judge found defendant's proofs of excusable neglect were insufficient. The judge found defendant's and his wife's statements that he was too emotionally distressed to file a timely PCR petition were contradicted by his pre-sentence and Adult Diagnostic and Treatment Center (ADTC)³ interviews, specifically his statement: "I don't let things get to me." The judge noted defendant failed to provide any documentary evidence of "the impact that his emotional distress may have had on the timely filing of his petition," such as evidence of treatment or current medical records.

³ Due to his conviction, defendant was referred for a psychological evaluation at the ADTC to determine his eligibility for sentencing under the Sex Offenders Act, N.J.S.A. 2C:47-1 to -10. He was deemed ineligible because there was no "clear finding of compulsive sexual behavior."

The judge stated, "[t]here is no evidence of stress induced physical ailments or hospitalization," noting the medical records provided from 2014 to 2016 only detail headaches and back pain, which are not the specific facts needed to sustain excusable neglect as our Supreme Court held State v. D.D.M., 140 N.J. 83, 100 (1995). In D.D.M., it was held a defendant must establish "specific facts . . . to show that his psychological treatment would have prevented him from pursuing his rights and remedies . . . within the five years." Ibid. In addition, the judge cited this court's opinion in State v. E.W., 413 N.J Super. 70, 79 (App. Div. 2010), in finding "defendant's emotional stress did not substantially interfere with his ability to prosecute the matter." In E.W., we held "that [the] defendant has not supplied medical records in connection with his claims of disability, and he has not provided evidence that would permit us to conclude that his disabilities have substantially interfered with his ability to prosecute [his PCR petition]" over ten years after his conviction. Id. at 72, 79.

The judge observed that defendant's business ownership, involving the management of employees, along with his current employment in the construction industry, belied his claim that he needed the assistance of his wife and his mother to complete a three-page, self-represented PCR petition form.

Simply put, the judge found "defendant had five years to submit a PCR [petition] and did not do so despite being capable of filing on time."

The judge next rejected defendant's contention he would suffer a fundamental injustice if his petition was dismissed as being untimely due to: (1) trial counsel's ineffectiveness in failing to explain how to file a PCR petition, inform him of the five-year limitation period, advise him to file an appeal, and provide discovery; and (2) his emotional distress and learning disabilities, which made it difficult for him to understand what was going on and caused him to "shut down." The judge credited trial counsel's testimony that "defendant expressed no concerns about the truthfulness of the factual basis he gave at" his plea colloquy. The judge stressed defendant did not equivocate in admitting his conduct constituted third-degree endangering the welfare of a child. She reiterated that defendant failed to persuade her "that his emotional stress and trauma substantially interfered with his pursuit of a [timely] PCR petition." Therefore, citing State v. Nash, 212 N.J. 518, 547 (2013), the judge reasoned enforcement of the time bar was not fundamentally unjust because defendant's allegations did not go to his guilt or innocence.

The judge found further support by citing the analysis our Supreme Court applied in State v. Afandor, 151 N.J. 41, 52 (1997) (citing State v. Mitchell, 126

N.J. 565, 580 (1992)), that a PCR judge "should consider the extent and cause of the delay, the prejudice to the State, and the importance of the [defendant's] claim in determining whether there has been an 'injustice' sufficient to relax the time limits." The judge pointed out defendant's alleged misconduct occurred between 1998 and 2001, and seven and a half years passed since his conviction; thus, reopening the case would break the closure behind Rule 3:22-12, unnecessarily retraumatize the victim, and force the State to contact witnesses' whose memories have faded. This would "significantly prejudice[] [the State] if . . . defendant were to rescind a plea that he made knowingly and voluntarily." Furthermore, the judge echoed her finding that defendant's claims lack merit, as they are contradicted by trial counsel's credible testimony, which is corroborated by defendant's sworn answers on the plea forms and at the plea hearing.

Although finding defendant's petition was untimely, Judge Lopez addressed the merits of his claims that trial counsel was ineffective regarding his plea agreement and sentence. Applying the two-prong test established in Strickland v. Washington, 466 U.S. 668, 687 (1984), that defendant must establish counsel's performance was deficient and the deficiency prejudiced defendant, the judge determined his claims were without merit.

As to the first prong, the judge—again crediting trial counsel's testimony over that of defendant and his wife—found counsel "was not ineffective because he adequately explained pertinent discovery and the plea forms with the defendant prior to the plea hearing," in addition to "explain[ing] potential outcomes if the case went to trial." The judge further reasoned defendant's prior experience with the criminal justice system belied his "surprise and lack of understanding" of the plea; his plea colloquy contradicted his claim that he was forced or coerced to accept the plea or was unsatisfied with counsel's services; and the plea judge clearly stated the sentencing consequences he faced entering the plea.

With respect to his sentence, the judge added that defendant's arguments were bald assertions, proscribed by State v. Cummings, 321 N.J. Super. 154, 170-71 (1999). There was no basis for defendant's claim that counsel represented he would qualify for home detention because it was never a plea condition and, given his offense, it was unlikely, as the plea judge told defendant. Counsel clarified at sentencing that the Sheriff's Office had misinformed him after defendant's guilty plea that defendant qualified for home detention. The judge found counsel was reasonable for requesting defendant be sentenced per the plea agreement because, as counsel testified, the plea was so

lenient that the sentencing judge would not have granted a lower sentence, and disputing the sentence in the plea would open the door for the judge to reject the plea. The judge further stated defendant offered no evidence of additional mitigating factors that could have impacted his sentence. Therefore, under State v. Worlock, 117 N.J. 596, 625 (1990), the judge maintained counsel could not be faulted for arguing an unsuccessful claim.

As to the second prong, the judge found defendant failed to show he was prejudiced by trial counsel's ineffectiveness because defendant faced "a litany of evidence demonstrating his guilt," including previous, identical charges and multiple witnesses corroborating the victim's statement. Therefore, he "could not have reasonably expected a better outcome" than the plea agreement his counsel negotiated. The judge, citing State v. DiFrisco, 137 N.J. 434, 457-58 (1994), held that, given the multiple instances his sentence was explained to him without him asking questions, defendant cannot show a reasonable probability he would not have pled guilty but for counsel's allegedly deficient performance. The judge found it would have been irrational to reject the plea agreement because defendant's original first-degree charge carried a maximum sentence of twenty years, included CSL and Megan's Law requirements, and was supported

by witness and victim statements, while the plea charge was only third-degree with a one-year sentence and two years of probation.

The judge also found the issue of home detention was moot because defendant already served his jail sentence. Since the plea agreement was valid, the only remedy is to grant a new sentencing hearing—not vacate the plea—because the remedy "must 'neutralize the taint' of a constitutional violation." Lafler v. Cooper, 566 U.S. 156, 170 (2012) (quoting United States v. Morrison, 449 U.S. 361, 365 (1981)). The judge, citing State v. Hess, 207 N.J. 123, 153 (2011), held "defendant would not have the opportunity to renegotiate or decide to go to trial for ineffective assistance of counsel that occurred after the plea was entered." At a new sentencing hearing, defendant would receive credit for time served and the mandatory conditions of pleading a sex offense, CSL and Megan's Law. Since he has already served his time, a new sentencing hearing would not achieve anything.

Defendant appeals, arguing:

POINT I

DEFENDANT HAS SHOWN SUFFICIENT
EXCUSABLE NEGLIGENCE AND THAT THE
INTEREST OF JUSTICE WARRANTED
RELAXATION OF THE FIVE-YEAR TIME BAR.

POINT II

AS DEFENDANT HAS SHOWN THAT HIS GUILTY PLEA WAS NOT ENTERED KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY DUE TO HIS ATTORNEY'S INEFFECTIVE REPRESENTATION, THE PCR COURT ERRED WHEN IT DENIED HIS PCR APPLICATION.

(1) TRIAL COUNSEL FAILED TO ADEQUATELY ADVISE DEFENDANT ABOUT THE FULL CONSEQUENCES OF CSL AND MEGAN LAW'S REGISTRATION.

(2) TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE ALIBI DEFENSES AVAILABLE TO DEFENDANT.

POINT III

TRIAL COUNSEL FAILED TO ARGUE IN FAVOR OF A LESSER-SENTENCE.

II

Where, as here, the PCR judge conducts an evidentiary hearing, we must uphold the judge's factual findings, "so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (quoting State v. Robinson, 200 N.J. 1, 15 (2009)). Additionally, we defer to a trial judge's findings that are "substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Ibid. (alteration in original)

(quoting Robinson, 200 N.J. at 15). We owe particular deference to the trial judge's credibility determinations. See State v. Locurto, 157 N.J. 463, 470-71 (1999). However, a PCR court's interpretation of the law is reviewed de novo. Nash, 212 N.J. at 540-41.

The Strickland test applies to PCR challenges involving guilty pleas. Hill v. Lockhart, 474 U.S. 52, 57 (1985).

To 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.

[DiFrisco, 137 N.J. at 457 (quotations and citations omitted).]

"Generally, representations made by a defendant at plea hearings concerning the voluntariness of the decision to plead, as well as any findings made by the trial court when accepting the plea, constitute a 'formidable barrier' which defendant must overcome." State v. Simon, 161 N.J. 416, 444 (1999) (quoting Blackledge v. Allison, 431 U.S. 63, 74 (1977)). "That is so because '[s]olemn declarations in open court carry a strong presumption of verity.'" Ibid. (quoting Blackledge, 431 U.S. at 74). "The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary


dismissal, as are contentions that in the face of the record are wholly incredible."

Blackledge, 431 U.S. at 74.

Guided by these legal principles and the record, we affirm substantially for the reasons expressed by Judge Lopez in her comprehensive written decision. We conclude defendant's contentions are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION