SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0256-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FAQUAN MARTIN a/k/a BIRTH AL-FUQUAN MARTIN, ALFUQUAN MARTIN, FUQUAN J. MARTIN, FUQUA MARTIN, and DEVIN M. MAYS,

Defendant-Appellant.

Submitted January 18, 2023 – Decided February 8, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 14-10-2513.

Joseph E. Krakora, Public Defender, attorney for appellant (Michael Pastacaldi, Designated Counsel, on the briefs).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Barbara A.

Rosenkrans, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Faquan Martin appeals from a June 7, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

In July 2016, a jury convicted defendant of multiple offenses, including first-degree witness tampering, charged in a twelve-count Essex County superseding indictment. Among other charges, defendant was acquitted of first-degree carjacking, first-degree robbery, and second-degree conspiracy to commit carjacking with A.W., an unindicted juvenile who pled guilty in the Family Part and agreed to testify against defendant.

Judge Michael L. Ravin presided over defendant's trial and sentenced defendant to an aggregate prison term of thirty-six years, with a parole ineligibility period of three and one-third years pursuant to the Graves Act, N.J.S.A. 2C:43-6(c). We affirmed defendant's convictions and sentence on direct appeal, State v. Martin, No. A-0926-16 (App. Div. June 22, 2018) (slip op. at 3).

We incorporate by reference the underlying facts, which were set forth at length in our prior opinion. Id. at 3-4. Relevant here, we stated that while

detained pretrial in separate facilities, defendant and A.W. exchanged correspondence, which was intercepted by the authorities. Ibid. To support the tampering charge at trial, we noted the State presented the following letter from defendant to A.W.:

> What'[s] good BRO, you on some bull shit, I told you I'ma gon take the [(illegible)] elude, all you had to do was sign a[n] affidavit [and] cut me loose from the [(illegible)]. If you already took it, you letting all these [(illegible)] n[****]s put shit inside your head, we better than that, you gon let me go down for something you already took[.] If I go down for [thirty] year[]s you better hope we never cross path[]s. We suppose to be brother[]s, but it's my bad[.] I thought you was a real n[****]. I'ma the only n[****] that did something for you when you came home, now you all big headed. My word[]s are short. Write back.
>
> [Id. at 3 n.2 (all alterations in original, except for the three redactions to offensive terms).]

Defendant's letter to A.W. enclosed a pre-written "affidavit," proposing A.W. attest to the following:

> I'ma [A.W.] and I'ma writing this affidavit on my own behalf to say I'ma the carjacker of [the victim]. I cop[p]ed out to the charges as a juvenile. Faquan Martin ain't have nothing to do with it at all. I seen Mr. Martin walkin'[,] I[] ask[ed] him did he need a ride[.] He said yes but he wanted to drive[.] I let Mr. Martin drive. He put his gun under the seat. Then after a short drive that's when the chase took place[.] The end.
>
> PS, I'ma willing to [testify] on my own behalf.

Sincerely,

[A.W.]

[Id. at 3-4 n.3 (alterations in original).]

Neither the State nor defendant presented the testimony of A.W. at trial.

In November 2019, defendant filed a timely pro se petition for PCR, supported by a brief. Pertinent to this appeal, defendant claimed trial counsel rendered ineffective assistance. Assigned counsel thereafter filed a supplemental brief, expounding upon defendant's assertions.

Citing the trial transcripts, PCR counsel argued defendant had expressed "his dissatisfaction with trial counsel" during trial. "[J]ust prior to opening statements," defendant told the trial judge his attorney misinformed him about the expiration of the State's ten-year plea offer. PCR counsel's submission included defendant's September 9, 2020 affidavit attesting to his conversation with trial counsel about the State's offer. PCR counsel further argued that, at the close of the State's case, defendant told the trial court his attorney failed to introduce into evidence exculpatory correspondence between defendant and A.W., or call A.W. as a defense witness.

Following oral argument, Judge Ravin reserved decision. On June 7, 2021, the judge issued a cogent written opinion, squarely addressing the

cumulative errors asserted in view of the governing Strickland/Fritz[1] framework. The judge denied all claims for relief. Relevant to the issues reprised on appeal, Judge Ravin determined defendant's contentions were dispelled by the trial record.

Addressing trial counsel's alleged deficiencies concerning A.W., Judge Ravin noted:

> Although [defendant] admits that trial counsel was asked on the record about the reasoning behind his choice not to call [A.W.] as a witness or to use the letters as exculpatory evidence, and trial counsel explained the strategic reasons behind this choice, [defendant] argues that the strategic reasons were nonsensical and demonstrated an inconsistent trial strategy. Upon questioning by the [c]ourt, trial counsel explained that he did not seek to use the letters because they would be unduly prejudicial. [Defendant] cited the fact that many of the letters were undated as well as the inference that the letters would demonstrate a connection between [A.W.] and [defendant].

Judge Ravin found trial counsel's decision to refrain from calling A.W., or introducing his correspondence to defendant, was "legitimate trial strategy." The judge elaborated:

---

[1] Strickland v. Washington, 466 U.S. 668, 687 (1984) (recognizing to establish an ineffective assistance of counsel claim, a defendant must demonstrate: (1) "counsel's performance was deficient"; and (2) "the deficient performance prejudiced the defense"); State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey).

> The letters [defendant] and [A.W.] wrote to [each] other that [defendant] sought to enter into evidence were highly prejudicial. This is so not simply because the letters illustrated the close relationship between the codefendants, but more importantly, because they include[d] a number of statements that a reasonable juror could find incriminating or see as evidence of bad moral character.

To support his conclusion, the judge quoted correspondence from A.W. to defendant. As one notable example, the judge found A.W.'s terminology implied an "attempt[] to coordinate the specifics of the false testimony each of them might give in order to divide up their culpability for the charged crimes." Referencing another letter, the judge found A.W.'s statement that he was "'on da run,'" implied he was "evading law enforcement." The judge therefore was convinced defendant "presented no competent evidence to demonstrate the likelihood that A.W. would have testified on [defendant]'s behalf if trial counsel had asked him to do so." Instead, the judge referenced A.W.'s plea agreement with the State, requiring A.W. "to testify against [defendant] if he were called upon to do so."

Turning to defendant's contention that trial counsel misinformed him about the expiration of the State's plea offer, Judge Ravin referenced the trial transcripts, noting trial counsel denied this claim on the record. The judge found defendant's PCR argument otherwise "lack[ed] any indicia of credibility."

Observing defendant's affidavit did not specify when his conversation with trial counsel had occurred, the judge recalled defendant's position during trial that the conversation occurred "immediately before the trial started."

However, by "that time, the matter had already been pending for years, had seen two grand juries, and had been through jury selection." Accordingly, the judge concluded he "would not have accepted a plea agreement at such a late juncture . . . even if one had existed." The judge found a hearing on this issue was unnecessary because the existing record permitted him to determine the contentions. This appeal followed.

Defendant raises the following arguments for our consideration:

POINT ONE

> [DEFENDANT] HAS MADE OUT A PRIMA FACIE CASE FOR INEFFECTIVE ASSISTANCE OF COUNSEL AND THE PCR COURT ERRED WHEN [IT] FAILED TO GRANT AN EVIDENTIARY HEARING.
>
> (1) Trial counsel failed to investigate [A.W.], call him as a witness at trial, or introduce letters between him and [defendant] as evidence at trial.
>
> (2) Trial counsel failed to properly advise [defendant] as to how much time he had to accept a [ten]-year plea offer.

Having considered defendant's contentions in view of the applicable law, we conclude they lack sufficient merit to warrant extensive discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Ravin in his well-reasoned decision. We add only the following brief remarks.

Ordinarily, "[i]neffective-assistance-of-counsel claims are particularly suited for [PCR] review because they often cannot reasonably be raised in a prior proceeding." State v. Hess, 207 N.J. 123, 145 (2011) (quoting State v. Preciose, 129 N.J. 451, 460 (1992)). Here, however, both issues raised on PCR and renewed on appeal were expressly asserted by defendant during trial, refuted on the record by his attorney, and rejected by the trial judge. On PCR, the same judge thoroughly considered the trial record in his decision and rejected defendant's claims.

We therefore reject defendant's argument that his "overall claims are dependent on evidence outside of the record." The trial record reveals otherwise and supports Judge Ravin's findings. Accordingly, we are satisfied defendant failed to meet either prong of the Strickland/Fritz test. Because there was no prima facie showing of ineffective assistance of counsel, an evidentiary hearing

was not necessary to resolve defendant's PCR claims. See Preciose, 129 N.J. at 462.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION