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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0986-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LOUIS ADAMS,

Defendant-Appellant.

Submitted May 3, 2023 – Decided May 11, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment Nos. 09-09-0823 and 09-09-0825.

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

William A. Daniel, Union County Prosecutor, attorney for respondent (Meredith L. Balo, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Louis Adams appeals from the Law Division's October 18, 2021 order denying his second petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

The underlying facts concerning the offenses involved in this matter are set forth in our prior opinion on defendant's direct appeal from his convictions for first-degree armed robbery and other offenses. See State v. Green, Docket Nos. A-2342-13 and A-3251-13 (App. Div. Mar. 8, 2017) (slip op. at 1-9), certif. denied, 231 N.J. 409 (2017).¹ Therefore, those facts will not be repeated here. In that decision, we affirmed defendant's convictions, but remanded for resentencing. Id. at 43. On remand, the trial court sentenced defendant to an aggregate forty-year term, which was subject to the No Early Release Act, N.J.S.A. 2C:43-7.2.

Defendant thereafter filed his first petition for PCR in which he alleged his trial attorney provided him with ineffective legal assistance during the course of the trial. Defendant's specific claims of ineffective assistance are fully set forth in our opinion affirming the denial of defendant's petition, and need not be summarized again here. State v. Adams, Docket No. A-0315-19 (App. Div. Feb.

¹ Defendant was tried along with a co-defendant, Kenneth B. Green. Id. at 1-2.

2, 2021) (slip op. at 10-11). The trial court denied defendant's petition, and we affirmed that decision. Id. at 15.

Defendant then filed a second petition for PCR. Defendant asserted his trial attorney provided him with ineffective assistance because he: (1) "failed to discuss trial strategy with defendant"; (2) "made no effort to separate defendant's culpability from that of [co-defendant] Green"; (3) "should have argued that defendant had no knowledge that Green intended to commit [the] robbery"; (4) "should not have withdrawn the objection to the DNA [evidence] which linked defendant to the gun" used in the robbery; (5) "should have introduced a conversation that a detective overheard at the hospital between defendant and co-defendant Green"; (6) "should not have joined in with co-defendant Green's motion to suppress the" statement described above; and (7) "should have sought severance and[, if the motion was successful,] called Green as a witness at defendant's separate trial." Defendant also argued that his "[f]irst PCR counsel was ineffective for not raising points one through seven" listed above.

Following oral argument, the PCR judge rendered a comprehensive written decision denying defendant's petition. The judge found that defendant's

first seven arguments concerning his trial attorney's performance were barred by Rule 3:22-4(b). Defendant does not challenge that determination on appeal.

The judge next considered whether defendant's claims concerning his first PCR attorney's assistance were cognizable under Rule 3:22-4(b)(2)(C), which states that a second petition for PCR "shall be dismissed unless . . . the petition alleges a prima facie case of ineffective assistance of counsel that represented the defendant on the first . . . application for [PCR]." The judge stated that "[a]lthough defendant has couched this second PCR partially in terms of first PCR counsel's performance," the judge "perceive[d] this summary assertion to be nothing more than an unsubstantiated blatant second bite at trial counsel's performance, not PCR counsel's performance." The judge found that defendant failed to allege he ever told his PCR counsel that he wanted to raise seven additional contentions in his first petition, and he failed to provide a certification detailing any of his interactions with PCR counsel. Thus, the judge ruled that the PCR attorney had no obligation to raise these belated arguments in the first petition. See Rule 3:22-6(d) (requiring PCR counsel to "advance all of the legitimate arguments requested by the defendant that the record will support").

Nevertheless, the judge went on to address each of defendant's arguments concerning the first PCR attorney's failure to raise seven additional arguments

concerning the trial counsel's performance, and found they all lacked merit. Defendant raises only two of these contentions on appeal: the PCR attorney's failure to argue that trial counsel was ineffective for not making a motion for a severance and for not seeking to raise an "alternative defense" that was separate from that presented by co-defendant Green. The PCR judge found no evidence in the record that a severance motion would have been successful or that Green would have testified in support of defendant's claim that he had no knowledge there was going to be a robbery when he and Green encountered the victims.

Because defendant failed to present a prima facie case of ineffective assistance by his first PCR attorney, the judge denied his request for an evidentiary hearing. This appeal followed.

On appeal, defendant presents the following contentions:

POINT ONE

THE PCR COURT IMPROPERLY DENIED DEFENDANT'S CLAIM THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF HIS FIRST PCR COUNSEL WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS FOR INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS[,] AND PETITIONS FOR [PCR].

B. DEFENDANT ESTABLISHED A PRIMA FACIE CLAIM[] FOR [PCR], BASED ON INEFFECTIVE ASSISTANCE OF HIS FIRST PCR COUNSEL, WHICH ENTITLED HIM TO AN EVIDENTIARY HEARING.

When petitioning for PCR, the defendant must establish, by a preponderance of the credible evidence, that he is entitled to the requested relief. State v. Nash, 212 N.J. 518, 541 (2013); State v. Preciose, 129 N.J. 451, 459 (1992). To sustain that burden, the defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565, 579 (1992).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing and the defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance, material issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. R. 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. Preciose, 129 N.J. at 462.

To establish a prima facie claim of ineffective assistance of counsel, the defendant is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987). There is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Further, because prejudice is not presumed, Fritz, 105 N.J. at 52, the defendant must demonstrate "how specific errors of counsel undermined the reliability" of the proceeding. United States v. Cronin, 466 U.S. 648, 659 n.26 (1984).

Having considered defendant's contentions in light of the record and the applicable law, we affirm the denial of defendant's second PCR petition substantially for the reasons detailed at length in the PCR judge's thorough written opinion. We discern no abuse of discretion in the judge's consideration of the issues, or in his decision to deny the petition without an evidentiary hearing. We are satisfied that the PCR attorney's performance in connection with defendant's first PCR petition was not deficient, and defendant provided nothing more than bald assertions to the contrary.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION