SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1515-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAQUAY WILLIAMS, a/k/a SHITTY MOO, JAMES C. WATTS, JAMALL WILLIAMS, LAQUAI C. TERRE, LAQUAI C. TERREWILLIAMS AND LAQUAI C. WILLIAMS,

Defendant-Appellant.

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Submitted September 12, 2023 – Decided October 10, 2023

Before Judges Whipple and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 13-09-2500.

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

William E. Reynolds, Atlantic County Prosecutor, attorney for respondent (Kristen Pulkstenis, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

In 2015, defendant Laquay Williams was convicted of a murder outside an Atlantic City strip club. At around four in the morning on December 29, 2006, Jerrod Moss, also known as "EZ", was shot and killed in a parking lot, across the street from a strip club in Atlantic City. A lengthy police investigation followed, in which numerous eyewitnesses came forward and identified defendant as the shooter. On September 18, 2013, an Atlantic County Grand Jury indicted defendant on four counts: first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a); second-degree unlawful possession of a handgun by a convicted person, N.J.S.A. 2C:39-5(b); and second-degree possession of a handgun by a convicted person, N.J.S.A. 2C:39-7.

Defendant was convicted on all counts and sentenced to over seventy years in prison.[1] We affirmed his conviction and sentence. State v. Williams, No. A-5036-14 (App. Div. Mar. 15, 2017) (Slip Op.).

[1] Defendant waived his right to a jury trial on the second-degree possession of a handgun by a convicted person charge and was found guilty on that count at a bench trial.

Defendant filed for post-conviction relief (PCR), alleging ineffective assistance of counsel, based primarily on trial counsel's failure to adequately investigate two testifying witnesses—Jerry Hazelwood and Kal Mitchell—and trial counsel's failure to call Cory Benning as a defense witness. In support of this argument, defendant produced certified statements from Hazelwood and pertaining to Mitchell (dating from 2017 and 2019, respectively) which he asserted were recantations of their trial testimony and established his innocence. In the alternative, defendant argued these certifications were newly discovered evidence and warranted a new trial.

Hazelwood was an inmate at South Woods state prison in February 2013, prior to defendant's trial. He shared a cell with defendant, who had been incarcerated on other unrelated charges. Hazelwood testified at trial that defendant called himself "Mr. New York Avenue"[2] because of the murder at issue here, where he killed "EZ." Hazelwood provided corroborating details about the crime, such as the whereabouts of defendant, victim, and others. Hazelwood testified defendant would talk about the murder "every weekend, fifteen, sixteen times." On the stand, Hazelwood explained he came forward

[2] Defendant had numerous pseudonyms: "Shitty Mu," "Bishop," and "Mr. New York Avenue."

with this information because it "felt like it was the right thing to do" because defendant was "bragging about it." Hazelwood reported that after defendant learned he had given this information to the prosecutor, defendant threatened and violently assaulted Hazlewood.

Years after giving this testimony, in 2017, Hazelwood provided the following affidavit, which was referenced in defendant's PCR filing:

> I Jerry L. Hazelwood Jr. would like it to be known that any statements or testimonies made by myself against [Laquay] Williams pertaining to his homicide case are false [and] completely untrue. I am now [Muslim and] feel as well as believe that in order to[] make repentance I must make right a wrong doing that I did partake in. I thank you in advance for your attentiveness to this matter.

Also included in that PCR filing was a statement dated September 28, 2017, from Kendall Jenkins, not a witness and otherwise unrelated to the case, which reads:

> I met [Jerry Hazelwood] here at Bayside State Prison. He is a young Muslim brother that used to seek counsel from me about how to move on from . . . "his past that . . . holds him back."
>
> So he went on to explain to me how he []did some bullshit back in the day and went to the prosecutor and lied on his celly "Shitty Mu" and got him life in prison.

> He said the brother violated him while they were at Southwoods and to him avenging the situation meant doing what he had to do.
>
> It just so happens that I know [defendant] and I knew that he never committed the murder he is locked up for.

Similarly, Kal Mitchell testified against defendant at trial. Mitchell, along with his girlfriend Shari Smith[3] and friend Lamar Roberts, were in the parking lot of the strip club on the night of the shooting. Both Mitchell and Smith testified that, while parked in Smith's car, they observed defendant walk up behind the victim. They saw defendant raise his arm and shoot the victim in the back of the head; defendant then jumped into a black two-door coupe—driven by a blonde-haired white woman—and sped away.[4]

In his PCR filing, defendant asserted Mitchell, too, recanted his testimony. Mitchell has not provided any written statement to that effect. Instead,

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[3] Smith has not recanted.

[4] Martin Dorsey—not connected to Mitchell, Smith, or Roberts—corroborated this story. He was also present at the parking lot that night. He testified that he had come to visit the strip club and was waiting in the parking lot for a friend to arrive. He saw defendant standing in a group of people in the club parking lot and saw defendant move behind the victim and raise his arm; Dorsey heard a gunshot. Defendant ran away to his girlfriend's car, while putting something in his waistband. Dorsey, like Mitchell, testified as part of a plea deal for a reduced sentence in an unrelated matter. Dorsey has not recanted.

defendant attached a certification by one Shamsiddin Abdur-Raheem, dated May 13, 2019, which reads:

> 1. I make this certification with my own volition . . . .
>
> 2. Recently I wrote a letter to a childhood friend I grew up with, Kal S. Mitchell . . . while he was housed at Bayside State Prison . . . . In this letter I . . . asked Kal . . . to exonerate [defendant], and admit that he completely lied on him when he testified against [defendant] in his criminal trial for the murder of [victim], because he knew and knows that [defendant] was not responsible for his killing . . . .
>
> 3. On Friday, May 10, 2019, I received a letter from Kal . . . .
>
> 4. Throughout the letter Kal mentions his past relationship with [defendant] and how they fell out of their friendship and allegedly led up to him deciding to lie on [defendant] about the murder . . . .
>
> 5. The main theme of Kal's letter centers around the fact that Kal admitted to lying . . . about the murder in retaliation for him allegedly being a rat and other disputes or disagreement they may have had. He stated in his letter: "He [defendant] a rat my [n***a]!!! I lied!!! It's a big difference where I'm from and cloth I'm cut from . . . ." Kal admits to lying on [defendant] for the murder . . . . (Emphasis added in original).
>
> . . . .
>
> 7. Also, around 2008/2009, at a window visit to see Kal while he was in the Atlantic County Jail, he admitted to me that he was trying to set [defendant] up with the homicide of [victim] by lying on him.

Defendant provides no other support for this assertion.

Finally, defendant produced a letter sent to him by trial counsel on May 20, 2014, which describes an interview with a potential witness named Corey Benning. In the letter, counsel states Benning "was very cooperative and is willing to testify in your trial on your behalf" and that he heard the gunshot "come from behind him" while defendant was "with him and in his field of vision when the shot was fired." Benning had previously given a statement to police, but that statement lacks these exonerating details described in counsel's letter.

The PCR court rejected defendant's arguments, reasoning:

> [N]one of [trial counsel's] alleged omissions rise to the level of [ineffective assistance] . . . . Trial counsel's cross examination of Jerry Hazelwood . . . thoroughly and completely highlighted [the credibility] issue with an appropriate level of vigor for the jury to focus on the witness's criminal record having a bearing on his credibility.
>
> . . . .
>
> [T]rial counsel's decisions regarding the extent and content of the examination of Hazelwood bespeak a professional and prudent ex[ercise] of strategic judgment in handling an adverse witness.

Similarly, Hazelwood's written retraction lacked indicia of reliability and was "made with the insouciance of one with nothing to lose, [and as such was] nothing more than a bald and unsupported conclusory contradiction."

As to Mitchell, the court reasoned that trial counsel had adequately represented defendant by impeaching Mitchell's testimony on several issues, emphasizing his self-interest in receiving favorable treatment by police, and noting his unreliability during the trial. The court noted defendant had "not established any reliability" as to Abdur-Raheem's later statement that Mitchell admitted to lying on the stand.

In sum, the court found Hazelwood and Mitchell's later "recantations" were insufficient to warrant a new trial because defendant presented them "without any evidence to show that they are probably true and the trial testimony is probably false." "Furthermore, the consistency of the testimony of Mitchell and Hazelwood at trial with that of . . . Martin Dorsey, Luis Rios, and Shari Smith[,] who have not recanted[,] . . . undermines the credibility of" the statements.

Finally, as to Benning, the court reasoned:

> Because of [the earlier interview with police], Mr. Benning's testimony at trial, even if consistent with the information contained in [counsel's letter to defendant], would be subject to impeachment. Moreover, trial

> counsel can be said to have exercised quintessential trial strategy in choosing not to call a witness as the proofs began to develop at trial. In light of the other eyewitness testimony and the physical evidence, including conclusive DNA evidence showing [defendant's] presence at the scene, trial counsel appears to have made the strategic choice to jettison a witness whose testimony would have been at odds with the balance of the proof in the case.

The PCR court denied defendant's application without an evidentiary hearing. This appeal followed with defendant raising the following arguments.

> POINT 1: THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS.
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> A. Trial Counsel Failed to Have Cory Benning Testify as an Alibi Witness.
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> B. Trial Counsel Failed to Adequately Investigate Jerry Hazelwood and Kal Mitchell.
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> POINT II: THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING AS TO DEFENDANT'S MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, WHICH WAS PREDICATED ON RECANTATIONS.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). PCR provides a "built-in safeguard that ensures that a defendant was not unjustly convicted." State v. Nash, 212 N.J.

518, 540 (2013) (quotation omitted). Appellate review is deferential to a PCR court's factual findings supported by sufficient credible evidence. Ibid.; State v. Gideon, 244 N.J. 538, 551 (2021) (quoting Nash, 212 N.J. at 540). Review of a PCR court's interpretation of the law is de novo. Nash, 212 N.J. at 540-41.

To establish a prima facie claim of ineffective assistance of counsel, a defendant must show: 1) counsel's performance was deficient; and 2) the deficiency prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 52 (1987) (adopting Strickland). Defendant is also entitled to the effective assistance of counsel on direct appeal. State v. O'Neil, 219 N.J. 598, 610 (2014).

We note there is a strong presumption 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. Cronic, 466 U.S. 648, 659 n.26 (1984).

A judge's decision to deny a PCR petition without an evidentiary hearing is reviewed under an abuse of discretion standard; however, we review the factual inferences and legal conclusions drawn by the court de novo. State v.

Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013) (citing State v. Marshall, 148 N.J. 89, 157-58 (1997)); State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016).

Finally, a motion for a new trial to address newly discovered evidence should be granted if the evidence is 1) material and 2) was not reasonably discoverable prior to trial. State v. Carter (II), 85 N.J. 300, 314 (1981). When the newly "discovered" evidence is a witness recanting their trial testimony, the "burden of proof rests on those presenting such testimony to establish that it is probably true and the trial testimony probably false." State v. Carter (I), 69 N.J. 420, 427 (1976) (citation omitted).

Defendant first argues the PCR court erred by rejecting his claim that his counsel was ineffective by not having Cory Benning testify at trial. Specifically, he submits the PCR court erred by justifying its decision on the premise that Benning's earlier statement to police was contradictory and would open him to impeachment. Defendant argues an objective reading of the earlier transcript does not conflict with Benning's apparent later statement that defendant was "with him and in his field of vision when the shot was fired."

"[I]f counsel's performance has been so deficient as to create a reasonable probability that . . . deficiencies materially contributed to defendant's conviction,

[defendant's] constitutional right [to counsel has] been violated." State v. Savage, 120 N.J. 594, 615 (1990) (citing Fritz, 105 N.J. at 58). In most situations involving trial strategy, a defendant must allege specific errors and demonstrate how those errors prejudiced him. Cronic, 466 U.S. at 659, n.26. As courts have observed, this is a high bar for a defendant to clear. The burden rests with the defendant to rebut a strong presumption that counsel's performance was adequate. Strickland, 366 U.S. at 690; Fritz 105 N.J. at 52.

In State v. Echols, 199 N.J. 344, 361-62 (2009), our Supreme Court considered a PCR case with similar facts. At a Rule 104 hearing, an eyewitness to a shooting stated that Echols was in his sight when the shots rang out. Id. at 361. That eyewitness testified at trial, but counsel did not elicit precise testimony to that effect. Id. at 361-62. The court refused to grant PCR, reasoning the trial testimony "was sufficient, if believed, for the jury to comprehend that [the witness] claimed that . . . defendant . . . [was] in the parking lot when the shots were fired [elsewhere.]" Id. at 362. In other words, the witness's testimony was "close enough" to the more explicit alibi to which he had previously attested.

Defendant's claim here is distinguishable from Echols. Defendant has provided proof his trial counsel found and interviewed a willing and favorable

alibi witness yet did not call the witness to testify. Defendant alleges a specific error, satisfying the first element of Cronic. Counsel's decision, if not justified, could have been very prejudicial to his case.

Nevertheless, the PCR court denied an evidentiary hearing, citing three justifications: 1) potential impeachment of the witness from an earlier statement to police; 2) the "weight of the evidence" being against this particular witness; and 3) DNA evidence linking defendant to the scene of the shooting. For these reasons, the PCR court concluded it was "unlikely" that such testimony would have successfully swayed the jury, therefore, counsel's representation was not deficient.

First, there is the issue of impeachment due to inconsistency in Benning's prior statements. In the 2014 letter to defendant, counsel states that Benning heard the gunshot "come from behind" while defendant was "with him and in his field of vision when the shot was fired." If believed, this is a reasonably strong alibi. In his interview with the police, Benning described the shooting as follows:

> [Benning]: I didn't exit the bar until I was finished talking to the bouncer.
>
> . . . .

When I exited the bar there's a couple people across the street, about [eight] to [ten] people, I heard one shot, I ran to the left . . . .

[Interviewer]: Ok now you explained to us earlier you, as you walked out the bar you started to proceed across the street.

[Benning]: Yes.

[Interviewer]: [Y]ou said . . . you weren't even halfway. . . . Is that correct?

[Benning]: Correct.

[Interviewer]: You were proceeding on the street . . . and you saw some other people there but. . . . (Ellipsis in original).

[Benning]: Right, but I couldn't really focus on who they were [be]cause I never seen him before I don't, you know.

[Interviewer]: I mean then you explained to us that you heard a shot?

[Benning]: Yes.

[Interviewer]: And you . . . looked at [the victim].[5]

[Benning]: I was already looking in that direction . . . . when I heard the shot, you know I'm looking, what I seen is peripheral. . . . [Be]cause I was trying to run.

. . . .

[5] Benning explains he knew the victim by the name "Rod".

> [Interviewer]: . . . [Y]ou explained that maybe there was some obstructions or things . . . . (Ellipsis in original).
>
> [Benning]: Yes, . . . it was cars in the way.
>
> [Interviewer]: Okay and you described a couple cars that you . . . . (Ellipsis in original).
>
> . . . .
>
> [Benning]: I seen an Escalade and I seen . . . I think it was an Expedition and I seen . . . two hardtop [Benzs,] a green one and a black one.

Officers later questioned Benning about defendant specifically, but never asked where defendant was, or whether he was the shooter:

> [Interviewer]: Now you talked about [defendant] . . . what did you notice him wearing[?]
>
> [Benning]: Uh, he had on a baseball hat and a hoodie.
>
> [Interviewer]: A hoodie? . . . [H]ow tall is he?
>
> [Benning]: I'm not sure[,] probably about 5'7". . . .
>
> [Interviewer]: Is he . . . light skinned, medium complexion, or dark-skinned?
>
> [Benning]: . . . [A]bout medium complexion.

Nowhere in this statement does Benning state that he either saw or did not see defendant at the scene of the shooting.[6] Benning says his vision was obstructed, that he was walking over to a group of people. One could infer that defendant was in the group, but Benning never explicitly says so in the police interview. His previous statement is somewhat incongruent with his later statement to counsel that the shot came from "behind," and that the defendant was "with him." Because the earlier interview was vague and nonspecific, however, it is not so contradictory as to render testimony from Benning useless to defendant. Benning never stated he was alone at the time of the shooting, and he need not have seen the actual shooter to have known that it was not defendant. Similarly, Benning's statement that he "couldn't really focus on who [the people in the parking lot] were" does not necessarily mean he did not recognize the defendant somewhere else in his field of view, or that defendant was not "with him."

The PCR court offered other reasons for denying an evidentiary hearing, but these do not undercut Benning's exculpatory statement. Yes, the defendant's DNA was found at the scene, in a sample of saliva. That proves defendant was

[6] Benning did tell the police he saw defendant earlier in the evening, trying to get into the club.

in the parking lot that evening, a fact he does not dispute. Defendant could still have been with Benning or within Benning's field of vision.

Further, the PCR court's other argument—that deciding not to call Benning as an alibi witness could be sound trial strategy because his story went against the weight of proof—is flawed.

While we recognize there is a high likelihood counsel had a sound reason for not calling Benning as a witness, that reason is not clearly discernable on the record before the PCR court. Without an explanation of that decision, the record is such that no court can presently discern whether "counsel's errors were so serious as to deprive the defendant of a fair trial . . . whose result is reliable." Strickland, 466 U.S. at 687.

Defendant has made a case, which, when viewed in the light most favorable to him, is viable under Strickland and Cronic: he has demonstrated a specific error which shows both deficiency and a significant likelihood of prejudice. See State v. Porter, 216 N.J. 343, 354 (2013) ("[O]nce a defendant presents a prima facie claim, . . . an evidentiary hearing should be ordinarily granted . . . ."). Thus, we remand for an evidentiary hearing on this issue, to obtain an explanation from counsel as to why Benning was not called.

We reject defendant's arguments asserting ineffective assistance concerning Jerry Hazelwood and Kal Mitchell. The statements offered were made years after the trial, which took place in January 2015. Hazelwood's statement is dated September 27, 2017; the statement concerning Mitchell is dated May 13, 2019. Obviously, there is no way trial counsel could have known about these recantations at the time of the trial.

Though he does not say so outright, defendant's argument might conceivably revolve around the proposition that, because Mitchell and Hazelwood later recanted, the factual underpinnings of their recantation should have been discoverable during the initial formulation of defendant's case. There are two issues with this assertion. These recantations contain little more than conclusory statements that the witnesses lied at trial and now wish to recant. Hazelwood's statement simply states that his testimony was untrue, without elaborating on specifics or any motivation for why he lied. Mitchell's "recantation" is entirely unverified hearsay. Moreover, trial counsel was able to cross examine both witnesses during trial. He did attempt to impeach the credibility of both witness's statements at trial. Finally, counsel's closing argument extensively reinforced the position that the testimony of these two witnesses was unreliable.

We also reject the argument the certifications which pertain to Hazelwood and Mitchell qualify as newly discovered evidence and warrant a new trial. "The sincerity of a recantation is to be viewed with extreme suspicion." State v. Hogan, 144 N.J. 216, 239 (1996). We "defer to a PCR judge's credibility findings[,] . . . particularly . . . in the context of recantation testimony, a species of newly discovered evidence generally regarded as 'suspect and untrustworthy.'" State v. Ways, 180 N.J. 171, 196-97 (2004) (quoting Carter (I), 69 N.J. at 427) (evaluating witness recantations alongside other facts in that case before remanding for a new trial based only on newly discovered physical evidence). If a PCR judge finds the recantations "patently untrue" and "unbelievable" while setting forth specific factors informing that decision, we defer to that determination. Carter, 69 N.J. at 427. In our view, the judge did not abuse his discretion in declining to grant a new trial.

Affirmed in part, reversed in part, and remanded for a hearing consistent with this opinion.