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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1554-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SPENCER S. YOUNG,
a/k/a SPENCER YOUNG JR,

Defendant-Appellant.

Submitted April 25, 2023 – Decided July 20, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 14-03-0459.

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

Raymond S. Santiago, Monmouth County Prosecutor, attorney for respondent (Melinda A. Harrigan, Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Spencer S. Young appeals from a November 8, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Before the PCR court, defendant raised a litany of issues challenging the effectiveness of trial and appellate counsel. On appeal, defendant limits his contentions to trial counsel's effectiveness. In his counseled brief, defendant raises a single point for our consideration:

POINT I

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO INFORM DEFENDANT OF HIS CONSTITUTIONAL RIGHT TO TESTIFY AT THE MIRANDA^[1] HEARING; IN THE ALTERNATIVE THIS MATTER MUST BE REMANDED FOR THE PCR COURT TO ADDRESS THIS CLAIM. (Not Addressed Below)

In his pro se brief, defendant raises the following additional arguments, which we renumber for the reader's convenience:

POINT I[I]

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

[DEFENDANT'S] MATTER SHOULD BE REMANDED TO THE [PCR] COURT FOR [A] HEARING IN REGARD[] TO THE CONFLICT OF INTEREST BETWEEN TRIAL COUNSEL AND POTENTIAL WITNESS TEEAYA SMITH. IT WAS THIS CONFLICT BETWEEN TRIAL COUNSEL AND TEEAYA SMITH (DEFENDANT[']S GIRLFRIEND) THAT DEPRIVED DEFENDANT OF A WITNESS IN HIS FAVOR.

POINT II[I]

[] DEFENDANT REQUESTS THAT THIS COURT REVIEW THE [TRIAL] COURT[']S DENIAL OF HIS SUPPRESSION MOTION DE NOVO IN REGARD[] TO STATE V. VINCENTY[], 237 N.J. 122 (2019)]. IN THE ALTERNATIVE, THIS MATTER [SHOULD] BE REMANDED BACK TO THE TRIAL COURT TO HEAR THIS CLAIM.

Unpersuaded by any of these contentions, we affirm.

I.

Following a jury trial, defendant was convicted of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), as a lesser-included charge of purposeful murder; first-degree felony murder, N.J.S.A. 2C:11-3(a)(3); and second-degree robbery, N.J.S.A. 2C:15-1, for his part in the beating death and robbery of Tommy Sudano. The incident occurred in Asbury Park around midnight on July 26, 2013, following an apparent drug deal. Sudano was hospitalized and died two days later. On July 30, 2013, police detained defendant after they found

him using Sudano's cellphone by tracking the phone's location. Defendant waived his Miranda rights and admitted his involvement in the incident.

Defendant and his cohort, Jahmir K. Bouie, were tried together. Defendant was sentenced to an aggregate prison term of fifty years, with an eighty-five-percent parole disqualifier pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

On direct appeal, defendant challenged the trial court's final jury instruction on accomplice liability. In the alternative, defendant argued the court improperly amended the judgment of conviction to reflect the appropriate NERA term without conducting a hearing. In a consolidated opinion, we affirmed defendant's convictions and sentence.² State v. Young, No. A-0460-16 (App. Div. March 12, 2019) (slip op. at 28). The Supreme Court denied certification, 239 N.J. 409 (2019).

Defendant thereafter filed a timely pro se PCR petition generally asserting trial counsel was ineffective "for not objecting to certain issues" and "not doing a thorough[] investigation of [his] case." Defendant also challenged appellate counsel's effectiveness for raising the "wrong" sentencing issue. Assigned PCR

² In the same opinion, we affirmed Bouie's convictions but remanded for reconsideration of his sentence. State v. Young, No. A-0460-16 (App. Div. March 12, 2019) (slip op. at 19). Bouie is not a party to this appeal.

counsel filed an amended petition and brief, arguing trial counsel was ineffective for failing to: (1) recuse himself because he had represented defendant's girlfriend, who was a potential trial witness; (2) review discovery with defendant before filing motions; and (3) obtain an expert witness regarding the victim's cause of death. PCR counsel also alleged appellate counsel was ineffective for failing to raise the following issues on direct appeal: (1) the court erroneously denied defendant's motion to suppress his statement based on law enforcement's "failure to advise him that charges were about to be filed against him," and defendant's "request to stop the interrogation"; (2) the court erroneously denied defendant's motion to suppress his in- and out-of-court identifications; and (3) the prosecutor made improper remarks during summation.

During oral argument on October 27, 2021, PCR counsel amplified defendant's argument, asserting defendant had amended his certification to add that "[h]e wanted to testify at the Miranda hearing." However, PCR counsel "d[id]n't think [he] forwarded the new certification." Thereafter, PCR counsel filed defendant's amended PCR petition and supplemental certification, both of which were dated November 23, 2020. In his certification, defendant asserted trial counsel "never explained to [him]" that he could testify at the hearing.

Defendant claimed he would have testified that he informed the interrogating detectives that he "wanted to get the fuck out of there."

Following argument, the PCR judge, who neither conducted the Miranda hearing nor presided over the defendant's trial, reserved decision. On November 8, 2021, the judge issued a cogent written decision that accompanied the order denying PCR. The judge squarely addressed defendant's claims of ineffective assistance of counsel "under the two-prong test established by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668[, 689] (1984), and subsequently adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987)." Pursuant to the Strickland/Fritz standard, a defendant seeking PCR on ineffective-assistance-of counsel grounds must demonstrate: (1) the particular manner in which counsel's performance was deficient; and (2) that the deficiency prejudiced defendant's right to a fair trial. This appeal followed.

II.

In his first point on appeal, defendant argues trial counsel was ineffective for failing to inform him of his constitutional right to testify at the Miranda hearing. Contending this failure demonstrated a prima facie showing of ineffective assistance of counsel, defendant claims a hearing is necessary to resolve the issue. Defendant further contends the PCR judge "failed to address

this claim, [al]though it was raised in defendant's [supplemental] certification . . . and at the PCR hearing." The record before the PCR judge demonstrates otherwise.

During oral argument before the PCR court, counsel "emphasize[d]" the "second point of [his] brief," which contended:

B. APPELLATE COUNSEL WAS INEFFECTIVE IN FAILING TO RAISE AS AN ISSUE ON DIRECT APPEAL THE COURT'S DENIAL OF HIS MOTION TO SUPPRESS [DEFENDANT]'S STATEMENT BASED ON [HIS] REQUEST TO STOP THE INTERROGATION.

Neither PCR counsel's brief nor defendant's pro se certification alleged trial counsel was ineffective for failing to inform him of his right to testify. That argument was implied during argument and thereafter supplemented by defendant's certification.

At issue was a statement purportedly made by defendant during his custodial interrogation when the officers stepped out of the interrogation room. According to the uncertified transcript of defendant's interview defendant stated: "I wanna get the fuck out of here." The State provided the transcript to the motion judge and did not dispute defendant "made the statement as reflected in the transcript." After "very carefully listen[ing] to the recording on multiple

occasions at various volumes," however, the motion judge rejected the parties' contentions that the statement was made.

For the first time in his supplemental certification, which was filed sometime after oral argument was held before the PCR judge, defendant claimed: "I wanted to testify that I did tell the officers that I wanted to get the fuck out of there." Defendant did not elaborate further about his proposed testimony. Nor did he explain how that testimony would have changed the outcome of the hearing.

In his written decision, the PCR judge addressed the motion judge's decision, stating:

In a [fifty-three]-page written opinion, the motion judge went into great detail explaining his conclusion after listening to a recording of the interview "on multiple occasions" that defendant never made that statement. The court determined that during a break in the interview, defendant muttered the word "officer," placed his head upon the table, and further muttered other inaudible words that did not support a factual finding consistent with defendant's purported remarks. For the purpose of providing a complete record, the motion judge found that, even if defendant had made the purported statement, it did not constitute an invocation of his right to remain silent. When defendant appealed his conviction, the denial of his motion to suppress was not raised.

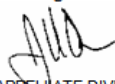
[(Emphasis added.)]

By citing the motion judge's decision,³ which assumed *arguendo* that defendant made the statement, the PCR judge implicitly recognized that had defendant testified to that fact at the Miranda hearing, the outcome would have been the same. Thus, even if defendant established trial counsel's representation was deficient for failing to advise defendant of his right to testify at the hearing, defendant cannot demonstrate prejudice under the second Strickland/Fritz prong.

Having considered defendant's remaining contentions – raised in his prose supplemental brief – in view of the applicable law and the record evidence, we conclude his reprised arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm those points substantially for the reasons set forth by the PCR judge in his well-reasoned decision.

Affirmed.

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



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³ We have reviewed the motion judge's decision, which was included in defendant's appellate appendix. In the nine pages dedicated to this issue, the motion judge considered the totality of the circumstances surrounding the statement. Those circumstances included: "the statement was made while he was alone in the interview room"; "he did not know that what he did and said in the room in was being recorded"; "[h]e did not communicate the statement" to law enforcement; "the statement was muttered – quietly, with defendant's head facing down into his shirt and toward the table"; and he made no request to stop the statement after the detectives returned to the room.