SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1876-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ISAIAH D. ROBERTS,

Defendant-Appellant.

Submitted March 7, 2023 – Decided March 17, 2023

Before Judges Rose and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment Nos. 16-07-0119 and 16-10-1693.

Joseph E. Krakora, Public Defender, attorney for appellant (Abby P. Schwartz, Designated Counsel, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Steven K. Cuttonaro, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Isaiah D. Roberts appeals from a December 20, 2021 order denying his petition for post-conviction relief (PCR) without a hearing. Before the PCR court, defendant raised a litany of issues challenging plea counsel's effectiveness. On appeal, defendant reprises three of those arguments, maintaining plea counsel:

> [I.] Fail[ed] To Make A Motion To Dismiss This Case As There Was A Violation Of Defendant's Right To A Speedy Trial.
>
> [II.] Misle[d] Defendant About The Prison Time To Which The Court Was Actually Going To Sentence Him.
>
> [III.] Fail[ed] To Investigate The Officer's Medical Records.

We reject these contentions and affirm substantially for the reasons expressed by Judge Colleen M. Flynn in her comprehensive, thirty-two-page written opinion.

We summarize the pertinent facts and procedural history from the record before the PCR judge. On January 22, 2015, defendant was arrested in Sayreville following an ongoing narcotics distribution investigation, during which defendant had made several sales of heroin to undercover officers. Before defendant could engage in a sale on that day, he noticed police; attempted to drive away; and struck a detective, who sustained injuries to his right wrist.

Police fired shots at defendant's vehicle. A chase ensued, and defendant was arrested with ten bricks of heroin in his possession.

An investigation concerning the police shooting followed. In the meantime, defendant was charged in separate grand jury proceedings with several offenses stemming from the January 22, 2015 incident (State Indictment No. 16-07-0119-S); and multiple charges concerning the narcotics investigation that led to defendant's arrest (Middlesex County Indictment No. 16-10-1693-I).

Pertinent to this appeal, in November 2017, defendant pled guilty to second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1), charged in State Indictment No. 16-07-0119-S. Pursuant to the terms of the negotiated plea agreement, the State agreed to recommend a seven-year prison term, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and dismissal of the remaining five counts of the indictment: first-degree attempted murder, N.J.S.A. 2C:5-1 and 2C:11-3; second-degree eluding, N.J.S.A. 2C:29-2(b); third-degree possession of an automobile for an unlawful purpose, N.J.S.A. 2C:39-4(d); third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1); and third-degree possession with intent to distribute heroin, N.J.S.A. 2C:35-5(a)(1) and (b)(3). The State also agreed to recommend that the sentence run

concurrently to its recommendation regarding defendant's guilty plea to certain offenses charged in Middlesex County Indictment No. 16-10-1693-I.[1]

In December 2017, defendant was sentenced pursuant to the terms of both plea agreements. Defendant then filed a direct appeal of both sentences, which we heard on an excessive sentencing calendar pursuant to Rule 2:9-11, and affirmed. State v. Roberts, No. A-5998-17 (App. Div. May 7, 2019).[2]

In September 2020, defendant filed a timely pro se petition for PCR, accompanied by his certification and legal memorandum. Thereafter, defendant was assigned PCR counsel, who filed a supplemental brief on defendant's behalf. Defendant's allegations against plea counsel were limited to the State indictment. Following oral argument in November 2021, Judge Flynn reserved decision.

On December 20, 2021, the judge issued a detailed written decision, squarely addressing the cumulative errors alleged in view of the governing

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[1] In June 2017, defendant pled guilty before Judge Flynn to second-degree money laundering and four counts of third-degree narcotics offenses. The State recommended an aggregate ten-year prison term and dismissal of the remaining ten offenses charged against defendant in the Middlesex County indictment.

[2] According to Judge Flynn's decision, defendant filed a motion for reconsideration of his sentence in December 2019, but the judge denied the motion without prejudice "for failure to specify and clarify the relief requested."

Strickland/Fritz[3] framework. The judge denied all overlapping claims for relief. Citing controlling precedent, the judge essentially concluded defendant either failed to support his assertions or the record belied his claims. We summarize the judge's decision regarding the three points renewed on appeal.

Initially, the judge thoroughly considered defendant's contention that plea counsel failed to file a speedy trial motion. The judge applied and balanced the four-factor test enunciated by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514, 530 (1972), as adopted by our Supreme Court in State v. Szima, 70 N.J. 196, 200-01 (1976): "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."

Judge Flynn found the twenty-two-month delay was due in large part to the complexity of the issues presented in view of the multitude of offenses charged in two separate indictments. Although the judge did not find the State deliberately delayed prosecution, she nonetheless weighed the second factor against the State. But the judge was not convinced defendant established "the

[3] 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).

length of time occasioned by the delay," especially in light of his engagement in plea negotiations. Finally, the judge found defendant failed to demonstrate he was prejudiced by the delay. Because the Barker factors weighed in the State's favor, the judge concluded defendant failed to demonstrate his attorney was ineffective for failing to file a speedy trial motion.

Secondly, Judge Flynn rejected defendant's assertion that plea counsel "advised and assured him that if he accepted" the State's offer, "his sentence would be no more than five . . . years in prison," subject to NERA. Referencing various portions of defendant's plea colloquy, the judge was satisfied the record belied defendant's claims.

As one notable example, the judge recounted that defendant had expressed dissatisfaction with plea counsel. During the plea hearing, the judge addressed defendant's concerns and recessed for forty minutes to afford defendant time to speak with his family members and plea counsel. Thereafter, defendant assured the judge he was not dissatisfied with plea counsel's representation, but rather he was "dissatisfied with the outcome." The following exchange ensued:

> [THE COURT]: Now, the outcome is that you're facing a recommendation by the State that you're going to jail?
>
> [DEFENDANT]: That's . . . not the issue. I . . . don't mind going to jail for what I did, Your Honor.

> [THE COURT]: Okay. What's the issue?
>
> [DEFENDANT]: I wanted to see if [plea counsel] could get me a five flat, not a five flat, a five[, with] eighty-five [percent subject to NERA,] and . . . that's all I asked, Your Honor.
>
> . . . .
>
> [THE COURT]: And are you feeling like he didn't put that counteroffer out there?
>
> [DEFENDANT]: He . . . told me he did.
>
> [THE COURT]: All right. Do you have a reason to not believe that?
>
> [DEFENDANT]: No.
>
> [THE COURT]: All right. Just because you don't get what you want doesn't mean that he didn't argue for it.
>
> [DEFENDANT]: Yes, I understand.

The judge thus concluded defendant's dissatisfaction with the outcome of his guilty plea did not establish a prima facie claim of ineffective assistance of counsel.

Finally, Judge Flynn considered defendant's argument that plea counsel failed to obtain the officer's medical records, which revealed he sustained only minor injuries during the assault. The judge quickly dismissed defendant's

contentions, astutely recognizing defendant's factual basis established he "attempted" to assault the officer:

> [PLEA COUNSEL]: Mr. Roberts, I direct your attention to January 22nd, 2015 in the Township of Sayreville, New Jersey in the County of Middlesex.
>
> [DEFENDANT]: Yes.
>
> [PLEA COUNSEL]: On that date and that time were you in an automobile?
>
> [DEFENDANT]: Yes.
>
> [PLEA COUNSEL]: Were you driving the automobile?
>
> [DEFENDANT]: Yes.
>
> [PLEA COUNSEL]: Was there an individual who was a police officer who was in the roadway at the time you were driving?
>
> [DEFENDANT]: Yes.
>
> [PLEA COUNSEL]: And while you were driving the car did you attempt to strike that individual with your automobile by placing your foot on the gas and driving in that direction of the individual?
>
> [DEFENDANT]: Yes.
>
> [(Emphasis added).]

Accordingly, the judge concluded that even if plea counsel failed to obtain the officer's medical report prior to entry of defendant's guilty plea, that purported error did not rise to ineffective assistance of counsel.

Having considered defendant's renewed contentions on these three points in view of the applicable law and the record evidence, we are satisfied he failed to satisfy 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 State v. Preciose, 129 N.J. 451, 462 (1992). We affirm Judge Flynn's cogent decision and conclude defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.