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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2117-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANGEL T. TORRES, a/k/a
ANGEL D. RAMOS, and
ANGEL RAMOS,

Defendant-Appellant.

Submitted June 7, 2023 – Decided September 15, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Indictment Nos. 10-03-
0333 and 10-03-0340.

Angel T. Torres, appellant pro se.

Yolanda Ciccone, Middlesex County Prosecutor,
attorney for respondent (Joie Piderit, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Angel T. Torres appeals from the denial of his second petition for post-conviction relief (PCR) without an evidentiary hearing because it was not verified as required by Rules 3:22-8¹ and 1:4-4,² and denying his application for assignment of counsel. On appeal, defendant claims the PCR court erred in rejecting his claim that the trial court failed to accurately charge the jury by omitting the accomplice liability charge and elements of the reasonable doubt standard, and that his trial, appellate, and first PCR counsel were all ineffective. Because defendant's petition is also procedurally barred under Rule 3:22-5, we affirm.

I.

Following denial of his Wade³ motion, a jury convicted defendant of reckless manslaughter, aggravated assault, and weapons offenses. The same jury also convicted defendant of a certain persons offense. In the aggregate, the judge sentenced defendant to a twenty-four-year term of imprisonment, subject

¹ Rule 3:22-8 states in pertinent part "the petition shall be verified by defendant and shall set forth without specificity the facts upon which the claim for relief is based."

² Rule 1:4-4 requires a PCR petitioner to submit an affidavit or certification setting forth a predicate claim for relief.

³ United States v. Wade, 388 U.S. 218 (1967).

to the periods of parole ineligibility and supervision required by the No Early Release Act.

On direct appeal, we affirmed defendant's convictions, rejecting his claims that the trial court erred by allowing the jury to consider an uncharged crime, reckless manslaughter; by discharging the jury and reassembling it for the certain persons count; by allowing an eyewitness to identify him as a member of the Latin Kings; by allowing evidence pertaining to an improperly administered photo array identification and tainted in-court testimony identifying defendant, finding the photo array complied with State v. Henderson,⁴ or alternatively State v. Morrison;⁵ and by failing to declare a mistrial after defendant was identified as a member of the Latin Kings. We remanded for resentencing. State v. Torres, No. A-0057-14 (App. Div. Jan. 24, 2019) (slip op. at 2, 6-7).

The New Jersey Supreme Court denied defendant's petition for certification. State v. Torres, 238 N.J. 511 (2019). Defendant then filed his first PCR petition claiming he was denied effective assistance of trial and appellate counsel. The PCR court conducted oral argument and denied the petition,

⁴ 208 N.J. 208 (2011).

⁵ 109 N.J. 223 (1988).

finding defendant failed to establish a prima facie case of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984). Defendant appealed from the PCR court's ruling, but withdrew the appeal, for reasons that are not clear from the record, and filed the second PCR petition under Rule 3:22-12(a)(2)(c), within one year of the denial of his first PCR.

The PCR court denied defendant's second PCR petition and ruled it was procedurally defective under Rule 3:22-5, as an attempt to relitigate previously adjudicated issues, and improper under Rule 3:22-4, for failure to raise those issues on direct appeal. The PCR court also noted defendant did not explain why the issues were not raised in his first PCR petition. The PCR court found defendant was not entitled to an evidentiary hearing on his second PCR petition.

In addition, the PCR court briefly addressed the merits of defendant's claims of ineffective assistance of trial, appellate, and PCR counsel and found that defendant failed to establish by a preponderance of the evidence a prima facie case of ineffectiveness of trial, appellate, or PCR counsel.

II.

We set forth the facts and procedural history in our unreported opinion, Torres, A-0057-14 (slip op. at 2-5), and need not repeat them here. Defendant claimed his first trial counsel was ineffective for failing to object to co-

defendant's testimony, his appellate counsel was ineffective for not addressing "inadmissible hearsay statements" on direct appeal, and his first PCR counsel was ineffective for not raising the improper jury instruction argument. The PCR court ruled on the papers that defendant's second PCR petition was timely filed as to his claim his first PCR counsel was ineffective, but his claims regarding improper jury charges and omitted jury charges on accomplice liability and the beyond a reasonable doubt standard should have been raised on direct appeal and were not. The PCR court also noted that defendant failed to explain why jury charge issues were not raised in his first PCR petition. The PCR court determined there was no ineffectiveness of trial, appellate, or PCR counsel, and defendant failed to show that the outcome of the trial would have been different.

III.

In his self-authored letter brief, defendant raises the following points for our consideration:

POINT I

THE PCR COURT COMMITTED "HAR[M]FUL ERROR," ERRONEOUSLY FINDING R[ULE] 3:22-5, TO CLAIMS "NEWLY PRESENTED" UNDER THE EXCEPTIONS PROVIDED UNDER R[ULE] 3:22-4(b)(1)(2), (B), AND (C). DENYING HIM "DUE PROCESS" TO MERITORIOUS CLAIMS, CONTRARY TO THE XIV AMENDMENT. (RAISED BELOW)

POINT II

THE SECOND PCR COURT COMMITTED "PLAIN ERROR," IMPROPERLY ASSESSING THE STRICKLAND/FRITZ STANDARD, IN REVIEWING "INEFFECTIVE ASSISTANCE OF COUNSEL" CLAIMS, AND CLEARLY ESTABLISHED LAW ON "JURY INSTRUCTIONS," VIOLATING HIS VI AND XIV AMENDMENTS UNDER THE CONSTITUTION. (NOT RAISED BELOW)

We reject defendant's arguments as plainly without merit.

IV.

When a PCR judge does not hold an evidentiary hearing, this court's standard of review is de novo as to both the factual inferences drawn by the judge from the record and the judge's legal conclusions. State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016). We apply that standard here. Id.

PCR proceedings are not a substitute for a direct appeal. R. 3:22-3; Afanador, 151 N.J. at 50. "Ordinarily, PCR enables a defendant to challenge the legality of a sentence or final judgment of conviction by presenting contentions that could not have been raised on direct appeal." Afanador, 151 N.J. at 49 (citing McQuaid, 147 N.J. at 482-83). "PCR cannot be used to circumvent issues that could have, but were not raised on appeal, unless the

circumstances fall within one of three exceptions." Id. at 50 (emphasis omitted) (citing R. 3:22-4).

Those exceptions are: "(1) the ground not previously asserted could not have been reasonably raised in any prior proceeding"; (2) "enforcement of the bar to preclude claims, including one for ineffective assistance of counsel, would result in fundamental injustice"; or (3) "denial of relief would be contrary to a new rule of constitutional law" under the United States or State of New Jersey constitutions. R. 3:22-4(a)(1)-(3). "The first exception is only available to a petitioner if he [or she] can show that the facts that form the basis for relief 'could not have been discovered earlier through the exercise of reasonable diligence.'" State v. Nash, 212 N.J. 518, 546 (2013) (quoting R. 3:22-4(a)(1)).

None of the three exceptions in Rule 3:22-4(a)(1)-(3) are applicable here, defendant's claims of error in the charge plainly could have been raised on direct appeal. They are not cognizable on PCR. R. 3:22-3.

The PCR court also found defendant's ineffective assistance of trial, appellate, and PCR counsel were also precluded by Rule 3:22-5. In any event, despite the procedural bar, the PCR court considered and addressed defendant's PCR ineffective assistance of counsel claims on the merits and found defendant

failed to show the performance of his attorneys fell below the objective standard of reasonableness.

To establish a PCR claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test formulated in Strickland, 466 U.S. at 687 and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). To meet the first Strickland/Fritz prong, a defendant must establish that his [or her] counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." 466 U.S. at 687. A defendant must rebut the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." Id. at 689. Thus, this court must consider whether counsel's performance fell below an objective standard of reasonableness. Id. at 688.

To satisfy the second Strickland/Fritz prong, a defendant must show "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. A defendant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

A defendant is only entitled to an evidentiary hearing when he or she "has presented a prima facie [claim] in support of [PCR]," meaning that a defendant must demonstrate "a reasonable likelihood that his . . . claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89, 158 (1997) (quoting State v. Preciose, 129 N.J. 451, 462 (1992)). A defendant must "do more than make bald assertions that he was denied the effective assistance of counsel" to establish a prima facie claim entitling him to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). A defendant bears the burden of establishing a prima facie claim. State v. Gaitan, 209 N.J. 339, 350 (2012). This court must "view the facts in the light most favorable to a defendant to determine whether a defendant has established a prima facie claim." Preciose, 129 N.J. at 462-63.

Defendant argues that his trial counsel failed to object to the inaccurate jury instructions, which he avers omitted accomplice liability and elements of the reasonable doubt standard. Defendant claims he lost his mother during the proceedings, and as a result, he was "devasted emotionally" for some time and unable to properly focus on the trial. Defendant asserts he and his trial counsel were "clueless" on the "improper instructions," and his appellate and first PCR

counsels were ineffective for not advocating the jury instructions were improper on appeal and in his first PCR petition.

Defendant concedes his former PCR counsel argued in his first PCR petition that trial counsel was ineffective for not objecting to certain testimony, offering to divulge defendant's prior judgment of conviction, and his flawed trial strategy. Defendant also acknowledges PCR counsel raised the issue of appellate counsel being ineffective for not pursuing those issues on appeal. Defendant asserts PCR counsel was ineffective because counsel never articulated to the court how these ineffective assistance claims "undermined" defendant's case.

The PCR court determined that defendant failed to satisfy either prong of the Strickland/Fritz test and, as a result, failed to establish a prima facie claim to warrant an evidentiary hearing. Moreover, the PCR court correctly pointed out that defendant's ineffective assistance arguments as to trial and appellate counsel were raised and adjudicated in his first PCR petition.

The PCR court also found defendant's ineffective assistance of PCR counsel claim was "unfounded and meritless, and the result of the first PCR proceeding would not have been different if his PCR counsel proceeded otherwise." On this record, defendant presents no evidence showing his PCR

counsel failed to present meritorious claims and does not specify how his PCR counsel rendered ineffective assistance. Having reviewed defendant's allegations in light of the applicable law, we are satisfied defendant's second PCR petition is procedurally barred and no exceptions apply, thus requiring its dismissal by the PCR court.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION