

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2388-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDGAR A. MEJIA,

Defendant-Appellant.

Submitted May 15, 2023 – Decided June 20, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 15-03-0525.

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 (Monica do Outeiro, Assistant Prosecutor, of counsel and on the brief; Annie J. Wen, Legal Assistant, on the brief).

PER CURIAM

This matter returns to our court for the second time following the Law Division's November 1, 2021 denial of defendant Edgar Mejia's first petition for post-conviction relief ("PCR"), which he now appeals. We affirm, substantially for the reasons expressed in Judge Michael A. Guadagno's thorough written opinion.

We will not recite the factual antecedents of defendant's appeal in detail. Instead, we incorporate by reference the facts as set forth in our prior unpublished opinion. State v. Mejia, No. A-4076-16 (App. Div. March 27, 2019) (slip op. at 1-5). For context, however, we will briefly discuss the procedural history of defendant's case.

On March 27, 2015, a Monmouth County grand jury returned Indictment No. 15-03-00525, charging defendant with first-degree aggravated sexual assault, contrary to N.J.S.A. 2C:14-2a(1) (count one), and third-degree endangering the welfare of a child, contrary to N.J.S.A. 2C:24-4a(1) (count two). Following a 2016 jury trial, defendant was convicted of both counts. After merger, the court sentenced defendant to a thirty-year prison term, subject to the No Early Release Act ("NERA"), N.J.S.A. 2C:43-7.2.

Defendant appealed, contending that the jury instruction as to aggravated sexual assault was not properly tailored and that the prosecutor made improper

comments in her summation. Mejia, slip op. at 1. On March 27, 2019, we affirmed defendant's convictions and sentence but remanded for the court to provide the required reasons for imposing the Sex Crime Victim Treatment Fund penalty. Id. slip op. at 14. On October 7, 2019, the Supreme Court denied defendant's petition for certification. State v. Mejia, 239 N.J. 946 (2019).

On November 8, 2019, defendant filed a pro se petition for PCR, raising the same claims of ineffective assistance of counsel as he now raises before this court.¹ Defendant was subsequently appointed counsel, who submitted an amended PCR petition, along with supportive certifications and investigation reports.

As part of his supporting certification, defendant attested:

2. I believe that I did not receive the effective assistance of my trial counsel. Specifically, although I testified at trial on my own behalf, by virtue of trial counsel's ineffective representation and utter lack of preparation for said testimony, I maintain that I was, in essence, really deprived of that fundamental right.

3. This was the first time that I ever testified in [c]ourt on my own behalf. Yet, trial counsel failed to properly prepare me for testifying. Counsel did not even go over the generalities regarding giving trial testimony[,] such

¹ Defendant presented additional arguments to the PCR judge that he has seemingly abandoned on appeal. Therefore, those arguments are deemed waived. See Pressler & Verneiro, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2021) ("[A]n issue not briefed [on appeal] is deemed waived.").

as the difference between direct and cross examination and what it means when a [j]udge sustains or overrules an objection. As a result, I did not know what to expect during the trial[,] which truly undermined my ability to perform well under the pressure of giving trial testimony at my own trial. I believe that this lack of preparation negatively impacted . . . my trial testimony because I was so frightened and nervous[,] and I simply did not know what to expect. Trial counsel also did not prepare me for cross-examination[,] so I was especially apprehensive about that[,] too.

4. Because of this lack of preparation, I specifically recall that while I was giving testimony, I was unable to think clearly. I felt like a little fish in a very large pond. As a result, my demeanor during testimony was most definitely affected by trial counsel's failure to properly prepare me. Just not knowing what to expect increased my anxiety. I am convinced, therefore, that if I was properly prepared by my attorney, I would have been a much better witness.

Additionally, defendant asserted:

5. Not only did trial counsel fail to prepare me to take the witness stand, but counsel also failed to call several witnesses on my behalf even though I informed my attorney that I wanted them called and that these witnesses were readily available. Although trial counsel did call one character witness, that being Dr. Jeffrey Rosenzweig, trial counsel failed to call the other witnesses I wanted to testify on my behalf.

6. I provided my trial attorney with the names and contact information of these witnesses so that they could be called on my behalf. However, trial counsel did not call them as witnesses at my trial. Rather, trial counsel told me that there was a 90% chance that I

would win the case[,] so I believed my lawyer that these witnesses were not needed.

7. Yet, the witnesses would have been able to testify as to my good character. Many would have also been able to testify about my positive interactions with children, including the alleged victim in this case.

On October 18, 2021, Judge Guadagno heard oral argument on defendant's PCR petition. On November 1, 2021, the judge issued an order and written opinion denying defendant's petition without an evidentiary hearing, concluding that defendant failed to satisfy either prong of the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (2984), which our Supreme Court adopted in State v. Fritz, 105 N.J. 42, 58 (1987). In relevant part, the judge reasoned:

Defendant provides no specifics as to what trial counsel could have done or said to better prepare him to testify or what difference it would have made at trial. Moreover, defendant was extensively questioned by the trial judge. Defendant acknowledged that he understood his right not to testify, the presumption of innocence, the State's burden to prove his guilt, as well as his right to testify and present evidence. Defendant told the trial judge he had discussed these rights and whether or not to testify with his counsel and had decided to testify. Before he took the stand, defendant denied that he had any additional questions for his counsel or that he needed any additional time to speak with him. Defendant has failed to demonstrate a prima facie case of ineffective assistance of his trial counsel

or that he had suffered prejudice as a result of counsel's performance.

Similarly, defendant has not demonstrated how his counsel's failure to call certain character witnesses prejudiced him. While defendant provides reports indicating that his counsel used an investigator to interview five potential witnesses, he has not identified which witness he asked counsel to call or what they would have said to change the outcome of the trial. Moreover, counsel's decision not to call those witnesses at trial is entitled to a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. While defendant is entitled to rebut that strong presumption, he has failed to do so.

[(internal quotations and citations omitted).]

This appeal followed. On appeal, defendant raises two of the same arguments he unsuccessfully presented to the PCR judge:

LEGAL ARGUMENT

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS.

- A. Trial Counsel Failed to Prepare Defendant to Testify.
- B. Trial Counsel Failed to Have Character Witnesses Testify.

When petitioning for PCR, a criminal defendant must establish, by a preponderance of the credible evidence, that they are 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).

Accordingly, 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. Rule 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, 466 U.S. at 687; Fritz, 105 N.J. at 58. 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 usually 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).


However, courts have long recognized certain "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." State v. Miller, 216 N.J. 40, 58 (2013) (quoting Cronic, 466 U.S. at 658). In Cronic, the United States Supreme Court identified the three rare instances in which counsel's performance is so deficient that prejudice is presumed. 466 U.S. at 659-62. The first, and "[m]ost obvious[,] . . . is the complete denial of counsel" during "a critical stage of . . . trial." Id. at 659. The second occurs when "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." Ibid. The third occurs "where counsel is called upon to render assistance under circumstances where competent counsel very likely could not," such as a conflict-of-interest situation. Bell v. Cone, 535 U.S. 685, 696 (2002) (citing Cronic, 466 U.S. at 659-62).

In Miller, our Supreme Court determined that there was "no authority . . . for the expansion of the presumption of prejudice beyond the narrow parameters set in Cronic." 216 N.J. at 61-62. Thus, outside of these limited circumstances, "actual ineffectiveness claims alleging a deficiency in attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice." State v. Pierre, 223 N.J. 560, 583 (2015) (quoting Strickland, 466 U.S. at 693). Because neither of defendant's arguments fall within any of these narrow exceptions, we review them under the standard two-prong approach for claims of ineffective assistance of counsel.

Having considered defendant's contentions in light of the record and the applicable law, we affirm the denial of defendant's PCR petition, substantially for the reasons articulated in Judge Guadagno's 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 trial attorney's performance was not deficient and agree that defendant has 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