SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2407-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KRISLA REZIREKSYON,
a/k/a VENETTE OVILDE,

Defendant-Appellant.

Submitted June 6, 2023 – Decided August 8, 2023

Before Judges Rose and Messano.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 12-06-1695.

Joseph E. Krakora, Public Defender, attorney for appellant (Monique Moyse, Designated Counsel, on the brief).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Frank J. Ducoat, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

A jury convicted defendant Krisla Rezireksyon of the first-degree aggravated manslaughter of her eight-year-old daughter, C.R.K., sixteen counts of second-degree endangering the welfare of C.R.K. and defendant's other two children, and two counts of third-degree aggravated assault. State v. Rezireksyon, No. A-0469-16 (App. Div. May 1, 2019) (slip op. at 7). "[T]he judge imposed a twenty-five-year sentence on the aggravated manslaughter conviction, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and two consecutive ten-year sentences for two counts of endangering the welfare of a child, for an aggregate sentence of forty-five years imprisonment. The judge imposed concurrent sentences on the remaining counts." Id. at 7–8. We affirmed defendant's conviction and sentence on direct appeal, id. at 9, and the Court denied her petition for certification, 240 N.J. 155 (2019).

Defendant filed a timely pro se petition for post-conviction relief (PCR) alleging trial counsel rendered deficient performance by failing to argue at sentencing that mitigating factor twelve applied. See N.J.S.A. 2C:43-1(b)(12) (defendant's willingness to cooperate with law enforcement authorities). Defendant referenced the statement she provided to police after her arrest. See id. at 3–4.

After counsel was appointed, defendant filed a supplemental petition, alleging trial counsel provided ineffective assistance by "failing to negotiate a favorable plea offer on [her] behalf." Defendant also reiterated that trial counsel failed to argue more "vigorously" for mitigating factor twelve and added that counsel also failed to challenge the aggravating sentencing factors urged by the prosecutor and found by the judge.[1]

After oral argument, the PCR judge, Michael L. Ravin, who was also the trial judge, filed a written opinion and conforming order denying defendant's petition without an evidentiary hearing. This appeal followed.

Before us, defendant raises the following argument for our consideration:

> POINT ONE
>
> THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING ON [DEFENDANT'S] CLAIM THAT COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO SECURE A PLEA DEAL OR ADVOCATED ADEQUATELY AT SENTENCING, OR THE MATTER MUST BE REMANDED BECAUSE THE PCR COURT'S FINDINGS ARE CONTRARY TO LAW AND THE RECORD.

[1] The only argument raised before us regarding counsel's deficient performance at sentencing is the failure to sufficiently argue for mitigating factor twelve.

We are unpersuaded and affirm substantially for the reasons expressed by Judge Ravin in his written opinion. We add only the following comments.

Judge Ravin applied the well-known standards governing review of a PCR petition alleging the ineffective assistance of counsel (IAC). To succeed on an IAC claim, a defendant must satisfy both prongs of the test enunciated in Strickland v. Washington, 466 U.S. 668, 687 (1984), and applied by our Court to similar claims brought under the New Jersey Constitution in State v. Fritz, 105 N.J. 42, 58 (1987). First, a defendant must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Fritz, 105 N.J. at 52 (quoting Strickland, 466 U.S. at 687). "To satisfy prong one, [a defendant] ha[s] to 'overcome a "strong presumption" that counsel exercised "reasonable professional judgment" and "sound trial strategy" in fulfilling his responsibilities.'" State v. Nash, 212 N.J. 518, 542 (2013) (quoting State v. Hess, 207 N.J. 123, 147 (2011)).

Second, a defendant must show a "reasonable probability" that the deficient performance affected the outcome. Fritz, 105 N.J. at 52. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." State v. Pierre, 223 N.J. 560, 583 (2015) (quoting Strickland, 466 U.S. at 694; Fritz, 105 N.J. at 52).

Our rules anticipate the need to hold an evidentiary hearing on a PCR petition, "only upon the establishment of a prima facie case in support of [PCR]." R. 3:22-10(b). "A prima facie case is established when a defendant demonstrates 'a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.'" State v. Porter, 216 N.J. 343, 355 (2013) (quoting R. 3:22-10(b)).

We, in turn, review the PCR court's decision "to grant or deny a defendant's request for a[n evidentiary] hearing under an abuse of discretion standard." State v. L.G.-M., 462 N.J. Super. 357, 365 (App. Div. 2020) (citing State v. Russo, 333 N.J. Super. 119, 140 (App. Div. 2000)). "[W]e review de novo the PCR court's conclusions of law." Ibid. (citing Nash, 212 N.J. at 541). Where, as here, the court does not hold an evidentiary hearing on a PCR petition, we may review de novo the factual inferences the trial judge drew from the documentary record. Id. at 361 (citing State v. O'Donnell, 435 N.J. Super. 351, 373 (App. Div. 2014)).

Judge Rabin rejected defendant's IAC claim that she wanted to plead guilty but her lawyers, two attorneys assigned from the Office of the Public Defender (OPD), told her she could not plead guilty, and they did not know why the prosecutor would not allow her to plead guilty. The judge reviewed the

"voluminous" record of pre-trial hearings that stretched almost four years and noted defendant "never indicated to the [c]ourt[,] either by her own words or through counsel[,] that she wished to plead guilty rather than go to trial." Judge Ravin reviewed the audio recording of a "status conference" at which a trial date was set and noted the attorneys were "still negotiating a plea."

Defendant contends Judge Ravin engaged in conjecture by asserting defendant's claim lacked credibility, given the amount of time and resources the OPD committed to the case. She also argues the judge relied on portions of the pre-trial record that were not "part of the PCR record."

Initially, defendant's contention that the judge should not have considered some pre-trial proceedings, particularly as they may relate to plea negotiations, because they were not part of the PCR record, lacks sufficient merit to discuss in this opinion. R. 2:11-3(e)(2). It suffices to say that our review of the record reveals much more than the status conference cited by Judge Ravin as support for the proposition that defendant was fully aware of the ongoing plea negotiations and knowingly chose to go to trial instead of pleading guilty.

Regardless of whether the judge speculated about whether OPD's commitment of resources affected the credibility of defendant's assertions, we essentially agree with Judge Ravin that defendant's IAC claim in this regard was

based on "merely bare and vague allegations." See State v. Jones, 219 N.J. 298, 311–12 (2014) ("In order for a claim of ineffective assistance of counsel to entitle a PCR petitioner to an evidentiary hearing, 'bald assertions' are not enough—rather, the defendant 'must allege facts sufficient to demonstrate counsel's alleged substandard performance.'" (quoting Porter, 216 N.J. at 355)). And, as noted, defendant's claim is belied by the pre-trial record.

Judge Ravin also rejected defendant's claim that trial counsel rendered ineffective assistance at sentencing by failing to vigorously argue mitigating factor twelve applied. Citing State v. Read, 397 N.J. Super. 598, 613 (App. Div. 2008), he noted that providing a confession to law enforcement "alone does not entitle a defendant to mitigating factor [twelve]." Judge Ravin also stated that "a defendant's evasion and lies minimize the value of cooperation as a mitigating factor." In fact, the record makes clear that defendant's statement to police was not a "confession," but rather was rife with prevarications and excuses rebutted by other evidence at trial. See Rezireksyon, slip op. at 3–6.

Judge Ravin concluded that even if counsel had argued for mitigating factor twelve at sentencing, "it is extremely unlikely that this [c]ourt would have found it applied." We agree. "The failure to raise unsuccessful legal arguments

does not constitute ineffective assistance of counsel." State v. Worlock, 117 N.J. 596, 625 (1990).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION