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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2457-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TERRANCE J. PATTERSON,
a/k/a JEROME PATTERSON,
POOKA PATTERSON,
PATTERSON, and TERRANCE J,

Defendant-Appellant.

Submitted December 12, 2022 – Decided January 11, 2023

Before Judges Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 14-08-0830.

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

LaChia L. Bradshaw, Burlington County Prosecutor, attorney for respondent (Jennifer B. Paszkiewicz, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Terrance J. Patterson appeals from a February 12, 2021 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. After careful review of the record and the governing legal principles, we affirm.

I.

On October 7, 2013, land surveyors found the body of a woman, later identified as Lisa Armstrong, in a wooded area in Tabernacle. Armstrong had two gunshot wounds in the back of her head, and her arms were bound with duct tape. After obtaining a warrant for Armstrong's cellphone records, police discovered she had received six texts or calls from a phone number registered to Lorain Hawkins on October 7, 2013, between 3:30 a.m. and 4:14 a.m. A subsequent review of Hawkins' phone records revealed calls and texts Hawkins made to a third number before and after the communications with Armstrong. The third number belonged to defendant. Because of the phone records, police focused their investigation on Hawkins and defendant.

According to Kerry Mitchell—Hawkins' husband—on October 11, 2013, Hawkins took defendant to her home, where she asked Mitchell to draft a letter to the police clearing Hawkins of any involvement in Armstrong's

disappearance. Since Mitchell and Hawkins were in an open marriage, Mitchell was familiar with defendant as someone with whom Hawkins had sexual encounters. Mitchell wrote the letter based on Hawkins' dictation and signed the letter along with Hawkins and defendant.

On October 12, 2013, defendant turned himself in to the police and disclosed the statement prepared by Mitchell and signed by defendant. New Jersey State Police Detectives Joseph Itri and Ian Fenkel conducted a recorded video interview. At the beginning of the recording, Itri read defendant his rights, and asked him if he understood them. Defendant answered in the affirmative. Thereafter, Itri asked defendant if he was willing to speak to them, to which defendant responded, "as much as I can." Before proceeding, Itri reminded defendant the rights he read to him applied throughout the interview, and defendant affirmed he understood. Defendant told Itri and Fenkel the purpose of the written statement was to admit how he killed Armstrong. He also stated the purpose of the statement was to "exercise [his] Fifth Amendment so [he] can explain . . . what happened . . . without involving any . . . other people."

Detective Itri offered to read the written statement, but defendant indicated he could read, and he wanted to read it. Defendant proceeded to read the written statement, noting he signed it along with Hawkins and Mitchell.

Specifically, defendant admitted being in an intimate relationship with Armstrong, which began in August 2013. In the early morning hours of October 7, 2013—the day of Armstrong's murder—defendant stated he, Armstrong, and Hawkins engaged in sexual activity together at Armstrong's residence in Trenton. Defendant claims Armstrong subsequently agreed to drive defendant home. During the ride, Armstrong accused defendant of stealing money from her pocketbook. An argument ensued, along with name calling. As the confrontation escalated, defendant claims Armstrong pulled a gun on him, but he was able to "snatch the gun" from her. He acknowledged he then retrieved duct tape from the trunk of the car, taped her hands, and "threw her in the back seat." Defendant stated he "drove until [he] couldn't drive anymore and pulled over by some woods." He stated he then threw her to the ground, pointed the gun, and shot two times. He explained he then returned to Armstrong's apartment, "took the money and the cell phone[,] and left her keys and pocketbook" He further indicated, "[m]any people have been accused and I want to say I am very sorry. I have wanted to turn myself in since Tuesday. I just couldn't take it anymore." He also stated, "[t]here were no other people involved although it would be better for me to have co-defendants to share my stress, but there are none."

After reading the confession, the interview continued for approximately four hours. Defendant answered the vast majority of the questions regarding the events leading to him killing Armstrong. He noted he used Armstrong's cell phone after the murder as a "smokescreen" to make it look like Armstrong was still alive. He also described the area where he discarded the gun after the shooting. However, at times, he would avoid certain questions, particularly when they involved Hawkins or his sister. For example, when asked about Hawkins and when he told her about the murder, defendant stated she "[h]as an attorney, so I don't want to get into [that]." Similarly, when asked if Hawkins or Mitchell were present for the murder, defendant expressed he did not want to answer, noting she had an attorney, and that Mitchell may also be represented by the same attorney. When questioned about the kind of car Cynthia White—his sister—owned, defendant stated he did not want to tell the detectives "[b]ecause [his] sister [had] nothing to do with [the case]." Defendant indicated toward the end of the interview he did not shoot Armstrong.

Defendant was ultimately indicted for first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one); first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) (counts two and three); first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1) and (2) (count four); and first-degree robbery, N.J.S.A. 2C:15-1(a)(1) and (2)

(count five). Hawkins passed away before defendant's trial from causes unrelated to this case and had not been charged by the time of her death.

At trial, defendant's interview was played for the jury. The State also introduced evidence which contradicted portions of defendant's statement. Recordings of phone calls between defendant and Hawkins from the Burlington County Jail consisted of defendant assuring Hawkins he did not implicate her. Defendant stated in his police interview he had not been in contact with anyone else near the time he went to see Armstrong, which contradicted his cellphone records. Defendant stated in the interview he and Armstrong were the only two individuals who left her home on the morning of the murder. However, surveillance footage showed three people leaving Armstrong's home, one of whom appeared to have their hands tied behind their back. Defendant denied choking Armstrong, yet Armstrong's neck had a choke bruise. Defendant's written and oral statements suggested he drove Armstrong's car the night of her murder, yet surveillance footage showed Armstrong's car remained parked at her house the entire night. Further, defendant told police he took money from Armstrong and used it to pay rent, yet his landlord told the police defendant had paid his rent on October 4, 2013, three days before Armstrong's murder. Finally, when the detectives asked him if he was covering for Hawkins because he was

in love with her, defendant denied both her involvement and his love for her, yet the text messages the police seized and revealed at trial showed the two had professed their love for each other.

Defendant was ultimately convicted of first-degree murder, first-degree felony murder, and first-degree kidnapping. The jury also found defendant guilty of second-degree robbery as a lesser-included offense of first-degree robbery. Defendant was also convicted of hindering prosecution, N.J.S.A. 2C:29-3. Defendant was sentenced to life imprisonment without possibility of parole pursuant to the "Three Strikes Law," N.J.S.A. 2C:43-7.1a. Counts two and three (felony murder) merged with count one. Defendant was sentenced to thirty years on count four (kidnapping) and twenty years on count five (robbery). All sentences were imposed to run concurrently with each other.

On direct appeal, we affirmed defendant's convictions, but remanded the matter for resentencing on count five because defendant was sentenced for a first-degree robbery instead of second-degree robbery.¹ State v. Patterson, No.

¹ On remand, the court re-sentenced defendant on count one, first-degree murder, to life imprisonment (seventy-five years), with an eighty-five percent parole disqualifier pursuant to No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. On count four, first-degree kidnapping, the court imposed a thirty-year sentence, with an eighty-five percent parole disqualifier pursuant to NERA. On count five, second-degree robbery, the court imposed a ten-year sentence, with

A-0135-16 (App. Div. Oct. 10, 2017). Defendant subsequently filed a pro se petition for PCR, which the court dismissed without prejudice. Defendant refiled the petition, and his counsel later filed an amended PCR petition with supporting documents. In a written opinion, discussed more fully below, the PCR court denied defendant's petition. This appeal followed.

II.

Defendant raises the following points on appeal:

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

- A. Trial Counsel Failed to Interview Cynthia White and Have Her Testify as an Exculpatory Witness.
- B. Appellate Counsel Failed to Pursue the Trial Court's Ruling that Defendant's Incriminating Statement was Admissible.
- C. Trial and Appellate Counsel Failed to Pursue the State's Citing of Defendant's Impecuniosity as a Motive for the Crimes.

The State counters the PCR court properly determined trial counsel was not ineffective in deciding not to call Cynthia White. Moreover, the State

an eighty-five percent parole disqualifier pursuant to NERA. Counts two and three, first-degree felony murder, merged into count one.

submits defendant's appellate counsel was not ineffective for electing not to raise the issue of defendant's statement on appeal. The State argues the trial court appropriately denied defendant's pre-trial motion to suppress his statement to the police and correctly found defendant did not express he wanted to terminate the interview or invoke his right to remain silent. The State further argues Detectives Itri and Fenkel did not press defendant when he indicated he did not want to answer questions about certain topics. Lastly, the State maintains trial and appellate counsel were not ineffective for failing to address the prosecutor's comments regarding defendant's impecuniosity as the remarks were fleeting and paled in comparison to the other significant evidence against defendant.

III.

Where, as here, a PCR judge does not hold an evidentiary hearing, we "conduct a de novo review of both the factual findings and legal conclusions of the PCR court." State v. Blake, 444 N.J. Super. 285, 294 (App. Div. 2016) (quoting State v. Harris, 181 N.J. 391, 421 (2004)). However, "we review under the abuse of discretion standard the PCR court's determination to proceed without an evidentiary hearing." State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013).

"[PCR] is New Jersey's analogue to the federal writ of habeas corpus." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)). PCR provides "a built-in 'safeguard that ensures that a defendant was not unjustly convicted.'" State v. Nash, 212 N.J. 518, 540 (2013) (quoting State v. McQuaid, 147 N.J. 464, 482 (1997)). A petition for PCR is not a substitute for a direct appeal. State v. Mitchell, 126 N.J. 565, 583-84 (1992) (citing State v. Cerbo, 78 N.J. 595, 605 (1979)).

To establish a prima facie claim of ineffective assistance of counsel, a defendant must show: (1) counsel's performance was deficient; and (2) the deficiency prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 52 (1987) (adopting Strickland).

Defendant is also entitled to the effective assistance of counsel on direct appeal. State v. O'Neil, 219 N.J. 598, 610 (2014). State v. Morrison extends the Strickland standard to the assessment of claims of ineffectiveness of appellate counsel. 215 N.J. Super. 540, 545-46 (App. Div. 1987). Appellate counsel has no duty to raise every non-frivolous argument available to a defendant. Jones v. Barnes, 463 U.S. 745, 751 (1983). "Experienced advocates since time beyond memory have emphasized the importance of winnowing out

weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues." Id. at 751-52.

IV.

A.

We are unpersuaded by defendant's argument trial counsel was ineffective in failing to interview and call defendant's sister, White, as an exculpatory witness. White provided a statement on December 3, 2019, in which she discussed her friendship with Hawkins and why she believed Hawkins was Armstrong's killer, not defendant. White became friends with Hawkins in 2011, after some initial animosity, when the two learned they were dating the same man, Terrence Miller. White noted Hawkins confided in her that she owned a firearm. On one occasion, Hawkins picked up White and drove around in the Trenton area for two hours looking for Miller. When White saw the gun, she was afraid Hawkins was going to shoot and kill Miller, especially since Hawkins looked visibly upset. However, Hawkins assured White she was not going to use the gun on him, leading White to assume Hawkins just planned on intimidating Miller.

Because of this incident, White stated when she saw the news of Armstrong's murder, she believed Hawkins had done it. White also stated she

had hoped she would get a call from police or defendant's attorney so she could bring up the story, but never received a call. She also stated she was not on speaking terms with defendant at the time and was afraid to come forward to tell her story for fear police may believe she was withholding information and be subjected to arrest for not cooperating with law enforcement.

The PCR judge rejected defendant's argument regarding the importance of White as an exculpatory witness. Specifically, the court noted:

The defense[']s assertion that counsel was ineffective for not calling defendant's sister . . . White as a witness at trial is not persuasive, [and] neither prong of the Strickland/Fritz Test is satisfied by this argument.

Her statement of proposed testimony obtained by an investigator six years after the incident is short on specifics and contradictory. For example, she stated that she did not have a close relationship with her brother, but then indicates she "knew him well enough" that he couldn't have killed the victim. This is both inconsistent and is also an unsupported claim.

Nothing has been shown that trial counsel would have had much to gain by calling her as a witness in defendant's trial. Her credibility and motives are suspect.

White's assertions and proposed testimony consist mainly of her beliefs. Her conclusions that her brother could not have shot the victim are self-serving in favor of her brother, occurring after his trial and conviction.

Her purported beliefs that Hawkins had a gun, and that she used the gun to kill the victim are speculative at best. She offers no detail or specifics in her account

The [c]ourt is not provided with any concrete information which would constitute anything exculpatory in favor of the defendant. The [c]ourt views her proposed testimony as a thinly veiled attempt to free her brother. There is no definitive exculpatory evidence which she could have offered. It was not a mistake to not have her testify at trial.

We agree with the PCR court concerning the lack of any specificity in White's statement. White stated she "did not believe" defendant was involved in murder. She further noted "she suspected" Hawkins was involved in the murder. Conspicuously absent from White's statement is anything beyond pure conjecture about who committed the murder and kidnapping in this case. Her "beliefs" were nothing more than speculation and were not based on any personal knowledge White had about Hawkins' purported involvement in the murder or defendant's lack of involvement. We concur with the trial court there was no error in trial counsel not calling White to testify at trial. We would add there was also no prejudice to the defendant as a result of White not testifying under prong two of Strickland.

B.

Defendant next contends appellate counsel was ineffective in failing to challenge the trial court's ruling that defendant's incriminating statements were admissible. Defendant's arguments are unavailing. Defendant asserts he unequivocally invoked his right to remain silent on six occasions. He contends he told the officers he wrote the confession letter in order to avoid making a formal statement to the police. He also argued by mentioning the Fifth Amendment it was his intent to exercise that right.

The State counters defendant's argument that he "[u]nequivocally invoked his right to remain silent at least six separate times" misrepresents the trial record. The State also asserts defendant fails to recognize that none of the cases cited by defendant involved a defendant invoking the Fifth Amendment privilege against self-incrimination when police ask questions that could incriminate other people. The State reiterates defendant only seemed to "invoke" or mention the Fifth Amendment when he wished to avoid answering questions that would implicate Hawkins, not himself. In addition, defendant had already confessed to his actions in the statement he signed and read to police prior to any questioning.

The trial judge reviewed the video of defendant's interview with the police and concluded defendant, being someone "familiar with the criminal justice system, having served a prison term for armed robbery . . . [and] did not evince any level of . . . anxiety . . . or other indicia of distress." Furthermore, based on defendant's statement he would speak to the detectives as much as he could, the trial court concluded "this [w]as a clear indication of defendant's willingness to speak, with a caveat that he might not be willing to discuss everything. . . ." The trial court noted:

When questioned about who wrote the confession letter, defendant responded that he wrote the letter, "[a]nd my purpose of the letter is to exercise my Fifth Amendment so I can explain to you what happened . . . without involving any, no other people." Although defendant uttered the constitutional provision "Fifth Amendment," there was no intention on his part to exercise his right to remain silent or any reason for the detectives to believe he was doing so. His intention was to avoid implicating anyone else (Hawkins) in the crime, a crime for which he was taking sole responsibility. Defendant was not invoking his right against self-incrimination, rather he was attempting to prevent a third party from being incriminated. The detectives, respecting his right not to answer, did not inquire further and moved on to another topic—the gun used in the crime.

When asked about the gun and what transpired at the scene of the crime, defendant said, "That's why I wrote the story," words that do not rise to the level of

even a remote or ambiguous invocation of the right to remain silent or terminate questioning.

The trial court went on to address other instances when defendant expressed a desire to refrain from answering certain questions and the detectives' actions in response. In short, the trial court noted defendant knowingly waived his Fifth Amendment rights and agreed to answer questions on a selective basis, which was "scrupulously honored" by the police. Defendant has not presented us with a meritorious basis upon which to disregard the trial court's comprehensive and well-supported findings.

Defendant cites State v. Johnson for the proposition that in refusing to answer some of the questions, he effectively invoked his Fifth Amendment right. 120 N.J. 263 (1990). In Johnson, the Supreme Court held the defendant therein invoked his right when he repeatedly responded to questions by saying, "I can't talk about it." 120 N.J. at 284. Furthermore,

[d]efendant's reluctance to answer questions was not confined to an isolated, ambiguous remark. He persisted, for well over an hour, in a pattern of prolonged silences and unresponsiveness, refusing to answer any and all questions about the . . . murders. Under those circumstances, it was not defendant's obligation to state his position more clearly; the police officers had the duty to determine specifically whether defendant's uncooperative responses constituted an assertion of the right to cut off questioning.

[Ibid. (emphasis added).]

Unlike Johnson, defendant openly answered detective's questions throughout the interview for approximately four hours. Furthermore, defendant only occasionally refused to answer questions involving Hawkins and his sister, but freely answered questions regarding his involvement in the murder, unlike Johnson who refused to answer, "any and all questions." Ibid. Finally, unlike the detective in Johnson who persisted in asking the defendant questions, Itri and Fenkel moved on to other questions whenever defendant stated he did not want to address a specific topic. At one point, one of the detectives even reminded defendant he could still invoke his right to remain silent at any time during the interview. At no point did defendant tell the detectives he no longer wanted to talk to them until the end of the interview. Moreover, it was defendant who voluntarily showed up to speak with police with and subsequently read a confession to the detectives prior to answering other questions.

Similarly, defendant's reliance on State v. Hartley is unfounded. 103 N.J. 252 (1986). In Hartley, the Supreme Court held a suspect had invoked his right to remain silent when he stated, "I don't believe I want to make a statement at this time" right after the police had finished reading his rights to him. Id. at 258. The police officers did not question him at that time, but another officer returned

to Hartley and stated, "I would like you to reconsider and now is the time if you are going to make a statement. Now is the time to do it." Ibid. Without readministering the Miranda² warnings, the officer proceeded to ask Hartley some questions. Id. at 259. Here, defendant argues his statement, "I'm going to avoid that question now" is similar to Hartley's " I don't believe I want to make a statement at this time," thereby showing he invoked his Fifth Amendment right.

However, unlike the defendant in Hartley, defendant made his statement after he had already waived his rights and told the police he would speak to them as much as he could. Furthermore, defendant stated he wanted to "avoid that question now" which, as the trial court noted, shows "a temporary or in perpetuity avoidance of that particular question at that particular time. It does not constitute a refusal to answer other questions." In fact, defendant answered the very next question and continued to answer the vast majority of the questions freely. Although a suspect does not need to invoke his Fifth Amendment right with "utmost legal precision," defendant did not express an intent to terminate the interview simply by refusing to answer a few questions, while openly answering others in a four-hour interview. Furthermore, when he refused to

² Miranda v. Arizona, 384 U.S. 436 (1966).

answer any question, the detectives moved on and did not persist on those questions.

Given the trial court's findings that defendant gave a knowing, intelligent, and voluntary waiver of his rights, and did not evoke his right to remain silent during the interview, we agree with the PCR court and conclude appellate counsel was not ineffective in failing to raise that issue on appeal. Since appellate counsel is not obligated to raise every nonfrivolous claim on appeal and has the discretion to winnow out weaker arguments, appellate counsel was not ineffective nor did his failure to raise this issue prejudice defendant.

C.

Defendant argues trial counsel was ineffective in failing to object to the State's use of defendant's financial status as motive for Armstrong's murder. Defendant also argues appellate counsel was ineffective in failing to raise the same issue on appeal. We are unpersuaded by these arguments.

"Generally, evidence of a defendant's financial state 'should not be admitted nor commented on.'" State v. Francisco, 471 N.J. Super. 386, 422 (App. Div. 2022) (quoting State v. Martini, 131 N.J. 176, 266 (1993)). Such evidence is improper when used to "establish[] 'that defendant had no apparent means of income and hence was likely to commit a crime for dollar gain[.]'"

Ibid. (alteration in original) (quoting Martini, 131 N.J. at 266); see State v. Terrell, 359 N.J. Super. 241, 247 (App. Div. 2003) (noting that use of a defendant's poverty to establish motive is improper). "[T]he State cannot present as a motive for robbery that a person may be poor or unemployed." State v. Lodzinski, 249 N.J. 116, 155 (2021) (citing State v. Mathis 47 N.J. 455, 471 (1966)). "The problem with generalized class assumptions of the type in Mathis . . . is that they miscast whole sectors of our population as potential criminals." Ibid. "Undoubtedly a lack of money is logically connected with a crime involving financial gain. The trouble is that it would prove too much against too many." Mathis, 47 N.J. at 471. "That a person is poor does not mean that he is inclined to commit a robbery" Lodzinski, 249 N.J. at 155. "[I]n general terms, there must be something more than poverty to tie a defendant into a criminal milieu." Mathis, 47 N.J. at 472 (emphasis added).

Here, in its summation, the State identified defendant's motive in killing Armstrong as money. The State then discussed how other evidence demonstrated defendant's involvement in Armstrong's murder such as: the surveillance footage; text messages and calls between him and Hawkins; his description of how he shot Armstrong, which the State argued could only have been accurately described by the killer; and the fact defendant used Armstrong's

cellphone as a smokescreen after her murder. Although the State referenced defendant's financial status, it also explained in great detail other components of the evidence that showed defendant is tied to the crime. As the PCR court noted,

[t]here was other evidence presented at trial which indicated that the defendant had a job, a valid driver's license, and his own place to live.

. . . According to the Terrell decision, more than a lack of financial resources can link a defendant into a "criminal milieu." Such was the case here. The evidence against this [p]etitioner was extensive and overwhelming, resulting in any comments about [p]etitioner's finances to be of minor importance.

Even assuming trial or appellate counsel raised this issue, it was certainly not a central theme in the State's closing. In fact, the evidence in the record shows defendant had a job and an apartment. Moreover, we agree with the trial court the evidence in this case against defendant was "extensive and overwhelming." We conclude there was not a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. The comments by the prosecutor certainly did not suggest that because defendant was "broke," in and of itself, was a reason to convict him. We recognize under Mathis, "there must be something more than poverty to tie a defendant into a criminal milieu." Mathis,


47 N.J. at 472. Here there was compelling evidence of defendant's guilt beginning with his confession, knowledge of the details of the crime, and surrounding circumstances not otherwise known to the public. Since the State's use of defendant's financial status was not the only means tying defendant to Armstrong's murder, kidnapping, and robbery, we hold the PCR court did not err in finding defendant failed to establish a prima facie case warranting a hearing pursuant to Strickland. Even assuming defendant met prong one of Strickland, we determine he would not satisfy prong two under Strickland.

V.

Measured by the Strickland standard, we find the PCR judge properly determined defendant failed to establish he received ineffective assistance of trial and appellate counsel. Defendant's assertions were insufficient to establish ineffective assistance of counsel entitling him to an evidentiary hearing. See State v. Cummings, 321 N.J. Super. 154, 170; see also State v. Jones, 219 N.J. 298, 311-12 (2014).

To the extent that we have not addressed any of defendant's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION