

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2524-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PEDRO R. SANCHEZ,

Defendant-Appellant.

Submitted October 16, 2023 – Decided November 6, 2023

Before Judges Mawla and Vinci.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Accusation No. 18-10-0819.

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

Yolanda Ciccone, Middlesex County Prosecutor, attorney for respondent (David M. Liston, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Pedro R. Sanchez appeals from the trial court's January 26, 2022 order denying his petition for post-conviction relief ("PCR") and motion to withdraw his guilty plea following an evidentiary hearing. Based on our review of the record and applicable legal principles, we affirm.

I.

We summarize the facts developed in the record. The State alleged that on July 12, 2018, defendant entered the car of his former girlfriend, K.R., and waited for her while she was at work.¹ After K.R. finished work, she entered her car and found defendant waiting for her. Defendant ordered K.R. to drive him to his residence. K.R. began driving but attempted to return to work. Defendant realized what K.R. was doing and grabbed the keys from the ignition causing the car to stop in the road.

K.R. fled and defendant caught her. He demanded she get back in the car. When K.R. fought back, defendant punched her arm, kicked her in the shoulder, pushed her to the ground, and choked her. K.R. agreed to get back in the car. Defendant told her to sit in the passenger seat while he drove. A 9-1-1 caller reported the incident, and police stopped the car.

¹ We use initials to protect the identity of the parties pursuant to Rule 1:38-3(d)(10).

Defendant was initially charged with second-degree kidnapping, N.J.S.A. 2C:13-1(b)(2); third-degree burglary, N.J.S.A. 2C:18-2(a)(1); and simple assault, N.J.S.A. 2C:12-1(a)(1). On August 27, 2018, the State advised defense counsel that charges of first-degree kidnapping, N.J.S.A. 2C:13-1(c), and second-degree burglary, N.J.S.A. 2C: 18-2(a) and (b), would be presented to the grand jury if the pre-indictment plea offer was rejected.

On October 4, 2018, defendant waived indictment and pleaded guilty to an accusation charging him with second-degree burglary, N.J.S.A. 2C:18-2(a) and (b). During the plea colloquy, defendant acknowledged that he was "going to pursue drug court^[2] with the understanding that the State is going to object."

As to the factual basis for the plea, defendant testified:

[DEFENSE COUNSEL:] [O]n July 12, 2018 you were in Monroe in Middlesex County; is that correct?

[THE DEFENDANT:] Yes.

[DEFENSE COUNSEL:] And you were drinking that day; is that correct?

[THE DEFENDANT:] Yes.

² Drug Court was renamed Recovery Court in January 2022. We utilize the name of the court in effect at the time of defendant's plea. N.J. Judiciary, CN 10844, Recovery Courts Work (2023).

[DEFENSE COUNSEL:] And on that day you entered a vehicle that belonged to someone with the initials of [K.R.]; is that correct?

[THE DEFENDANT:] Yes.

[DEFENSE COUNSEL:] And you did not have permission to go into that vehicle, right, at that time?

[THE DEFENDANT:] Correct.

....

[DEFENSE COUNSEL:] And . . . you entered the vehicle with the purpose to harass [K.R.]; is that correct?

[THE DEFENDANT:] Yes.

[DEFENSE COUNSEL:] And while you were in the vehicle doing that you did threaten to inflict bodily injury on [K.R.]; is that correct?

[THE DEFENDANT:] Yes.

In response to questions by the court, defendant testified:

THE COURT: All right. So what was your purpose in breaking into her car?

[DEFENSE COUNSEL:] That was to harass.

THE DEFENDANT: Yeah.

THE COURT: Was to harass her?

THE DEFENDANT: Yeah, intentions of talking and –

THE COURT: Even though she didn't want you there, right?

THE DEFENDANT: Yeah.

At the conclusion of the plea hearing, the court determined defendant "provided a factual basis for second-degree burglary."

After pleading guilty, defendant applied to the drug court program. The State objected, and his application was denied. Pursuant to a negotiated plea agreement, defendant was sentenced in the third-degree range to a four-year term of imprisonment subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. All other charges were dismissed. On direct appeal, we affirmed the sentence on the sentencing oral argument calendar but remanded for removal of an inapplicable condition. State v. Sanchez, No. A-5022-18 (App. Div. December 2, 2019) (slip op. at 1).

On February 3, 2020, defendant filed a petition for PCR. On September 28, 2020, defendant, through counsel, filed an amended petition for PCR and a motion to withdraw his guilty plea. He argued that: (1) his plea should be vacated because there was an insufficient factual basis and allowing the plea to stand would be a manifest injustice; and (2) plea counsel was ineffective for failing to review discovery with him and misadvising him of his chances of getting into drug court.

The trial court conducted an evidentiary hearing, which lasted two days. At the hearing, defense counsel testified she received a CD of photographs and a DVD of an "MVR or body-worn . . . of the responding officer and the . . . victim's statement at the scene." Counsel did not show defendant photographs of K.R.'s injuries, nor did she describe K.R.'s injuries to him. Counsel did not recall if she watched the DVD with defendant but believed she did because she remembered discussing it with him. K.R. did not have any serious injuries, and counsel did not tell defendant K.R. had blood dripping down her face.

Counsel met with defendant at least twice before the plea hearing and they had "substantial" conversations about the facts of the case, the evidence, the plea offer, the kidnapping charge, and drug court. Counsel advised defendant that "the trial risk was very high given the facts of the case and the first-degree kidnapping charge" and that he should accept the plea offer "because his risk of time afterwards was very high." Defendant could not apply to drug court with the kidnapping charge pending. Defendant decided to pursue a resolution that included a plea with a drug court application after the kidnapping charge was dismissed.

Defense counsel knew the State would object to defendant's drug court application. Defendant asked defense counsel if she had ever won a drug court

appeal, and she responded that she had never lost one. However, she advised defendant drug court "was a long shot or it was an uphill battle" in his case because "the facts . . . were frightening" and the State's argument "for dangerousness was very strong because . . . the underlying facts, in [her] opinion, would support a kidnapping." She advised defendant the plea offer was a good deal with or without drug court.

Defendant testified that he did not receive the photographs or DVD in discovery, but counsel described photographs depicting "an injury on [KR's] forehead and she was . . . dripping in blood. Other than that . . . some minor bruising in the arms and hands, and . . . a cut in . . . her hand." According to defendant, the injuries depicted in the photographs appeared less severe than counsel described. Had he seen the photographs before the plea, he "would've been more motivated to . . . make a decision of [his] own . . . to choose trial because [he] . . . would [have] at least known . . . what [he] was up against."

Defendant also testified defense counsel advised him "as long as [he took] a plea offer . . . [he] would be eligible for [d]rug [c]ourt" and by "taking this plea deal now, it would increase, . . . it would definitely . . . give [him] chances of . . . getting into [d]rug [c]ourt." Counsel told him "it's very possible, [his] chances of getting into [d]rug [c]ourt."

Defendant testified that, contrary to his admission during the plea hearing, he entered the car with a different purpose. He entered the car "to try to work things out" and "not intentionally" to harass her.

On January 26, 2022, the trial court denied defendant's petition for PCR and motion to withdraw his guilty plea. The court rejected defendant's claim that he did not provide an adequate factual basis for the plea, finding that "[a]lthough he may have expressed interest in talking to her, . . . he . . . admitted that his actions were intended to harass her, which is exactly what he admitted to doing." The court determined, based on defense counsel's "convincing" testimony, that defense counsel "did not commit any errors in her representation of the defendant."

The court also rejected defendant's claim that he would not have entered the plea if he had seen the photographs. It found "credible" defense counsel's testimony that the motivation for the plea was to avoid the risk of trial on the first-degree kidnapping charge. Because the kidnapping charge did not require proof of injury, the court found that "the pictures and the injuries of the victim had little to do with the motivation to enter into a plea." The court held, "[w]ith these facts in mind, the defendant has failed to convince this [c]ourt that even if

he had viewed the pictures, there is a reasonable probability that he would not have [entered] the plea."

The court also rejected defendant's claim that he would not have entered the plea if he knew his drug court application would be denied. It credited defense counsel's testimony regarding the plea and the drug court application.

The court denied defendant's motion to withdraw his guilty plea. It found that defendant failed to set forth a colorable claim of innocence because he provided an adequate factual basis for the plea and "there were no other facts set forth that would . . . support a claim of innocence." The court also found defendant waited until after sentencing and his direct appeal to make his application, he entered into a favorable plea agreement, and the State would be prejudiced if the plea was withdrawn.

Defendant raises the following points on appeal:

POINT I

[DEFENDANT] IS ENTITLED TO RELIEF ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN DISCUSSING DRUG COURT AND BY FAILING TO REVIEW DISCOVERY ADEQUATELY WITH HIM, THEREBY PRESSURING HIM INTO A PLEA HE OTHERWISE WOULD NOT HAVE TAKEN.

POINT II

[DEFENDANT'S] GUILTY PLEA MUST BE SET ASIDE.

II.

Defendant contends that the trial court erred by denying his petition for PCR. We are unconvinced.

Our review of a trial court's denial of PCR following an evidentiary hearing "is necessarily deferential to [the] PCR court's factual findings based on its review of live witness testimony." State v. Nash, 212 N.J. 518, 540 (2013). After an evidentiary hearing, we should not disturb "the PCR court's findings that are supported by sufficient credible evidence in the record." State v. Pierre, 223 N.J. 560, 576 (2015) (quoting Nash, 212 N.J. at 540). We review any legal conclusions de novo. Nash, 212 N.J. at 540-41.

"Post-conviction relief is New Jersey's analogue to the federal writ of habeas corpus." State v. Afanador, 151 N.J. 41, 49 (1997) (citing State v. Preciose, 129 N.J. 451, 459 (1992)). "It is a safeguard to ensure that a defendant was not unjustly convicted." Ibid. (citing State v. McQuaid, 147 N.J. 464, 482 (1997)). It provides a final opportunity for a defendant to raise a legal error or constitutional issue, including a violation of the right to effective assistance of counsel as guaranteed by the Sixth Amendment of the United States Constitution

and Article I, Paragraph 10 of the New Jersey Constitution. "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).

In addressing an ineffective assistance claim, we follow the two-pronged standard formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). "First, the defendant must show that counsel's performance was deficient." State v. Gideon, 244 N.J. 538, 550 (2021) (quoting Strickland, 466 U.S. at 687). The test is whether "counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. "Second, the defendant must have been prejudiced by counsel's deficient performance." Gideon, 244 N.J. at 550 (citing Strickland, 466 U.S. at 687). To prove this element, a defendant must demonstrate "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. Failure to meet either prong of the Strickland/Fritz test results in the denial of a petition for PCR. State v. Parker, 212 N.J. 269, 280 (2012).

The defendant must establish, by a preponderance of the credible evidence, that he is entitled to the requested relief. Nash, 212 N.J. at 541. 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). Defendants must do more than make "bald assertions" of ineffective assistance. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999).

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 not presumed, 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); see also Fritz, 105 N.J. at 52 ("[P]rejudice must be proved . . . it is not presumed."). "The test is not whether defense counsel could have done better, but whether [they] met the constitutional threshold for effectiveness." Nash, 212 N.J. at 543. The court should review counsel's performance in the context of the evidence against defendant at the time of the plea or trial. State v. Castagna, 187 N.J. 293, 314-15 (2006).

To demonstrate "prejudice after having entered a guilty plea, a defendant must prove 'that there is a reasonable probability that, but for counsel's errors, [he or she] would not have pled guilty and would have insisted on going to trial.'" State v. Gaitan, 209 N.J. 339, 351 (2012) (quoting State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009)). A defendant must show that, "had he been properly advised, it would have been rational for him to decline the plea offer and insist on going to trial and, in fact, that he probably would have done so." State v. Maldon, 422 N.J. Super. 475, 486 (App. Div. 2011).

As to prong one of the Strickland test, after hearing testimony from defendant and defense counsel, the court determined that defense counsel "did not make any errors in her representation of defendant." In making this determination, the court considered defense counsel's testimony that she believed she did show defendant the DVD of K.R.'s statement at the scene, she did not tell him K.R. had blood dripping down her face, and she did not tell him he would be admitted to drug court.

As to prong two of the Strickland test, the court rejected defendant's claim that he would not have entered the plea if he saw the photographs of K.R.'s injuries. The court credited defense counsel's testimony that defendant pleaded guilty to avoid conviction on the first-degree kidnapping charge. In addition,

because the kidnapping charge did not require proof of injury, the court found that "the pictures and the injuries . . . had little to do with the motivation to enter the plea."

The court also rejected defendant's claim that he would not have entered the plea if he knew he would be rejected from drug court. Again, the court based its decision on the "credible" and "convincing" testimony of defense counsel. Moreover, defendant testified at the plea hearing and the evidentiary hearing that he knew the State would object to his application, and he might not be accepted into drug court.

Based on the evidence presented, the court found defendant failed to prove defense counsel's representation was deficient or that there is a reasonable probability, but for counsel's alleged errors, he would have rejected the plea offer and insisted on going to trial. The court's findings are supported by sufficient credible evidence in the record and there is no basis to disturb them.

III.

Defendant contends the trial court erred by denying his motion to withdraw his plea because he did not provide an adequate factual basis. We are not persuaded.

We review the denial of a motion to vacate a plea for lack of an adequate factual basis de novo. See State v. Urbina, 221 N.J. 509, 528 (2015) (quoting State v. Tate, 220 N.J. 393, 404 (2015)). "An appellate court is in the same position as the trial court in assessing whether the factual admissions during a plea colloquy satisfy the essential elements of an offense." Tate, 220 N.J. at 404.

"A factual basis for a plea must include either an admission or the acknowledgment of facts that meet 'the essential elements of the crime.'" Id. at 406 (quoting State in the Int. of T.M., 166 N.J. 319, 333 (2001)). The requirement "is to 'protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge.'" Tate, 220 N.J. at 406 (quoting State v. Barboza, 115 N.J. 415, 421 (1989)).

"However, the defendant's admissions or acknowledgements may be understood in light of all surrounding circumstances." State v. Sainz, 107 N.J. 283, 293 (1987); See also Mitchell, 126 N.J. at 581 ("In determining whether an adequate factual basis exists, the court may consider the defendant's statements as well as information gleaned from the surrounding circumstances.").

Defendant pleaded guilty to second-degree burglary, N.J.S.A. 2C:18-2(a) and (b), under which the State must prove a person entered a structure without permission, with the purpose to commit an offense therein, and, in the course of committing the offense of burglary, threatened to inflict bodily injury. At the plea hearing, defendant testified he entered K.R.'s car without permission with the purpose to harass her and threatened to inflict bodily injury on her. Defendant's words, when considered in light of the circumstances surrounding the commission of the crime, were sufficient to state an adequate factual basis for the plea. The fact that defendant may have also intended to attempt to reconcile with K.R. does not negate his admission that he entered the vehicle with the purpose to harass her. The trial court determined correctly that defendant provided an adequate factual basis for the plea.

Defendant next contends the trial court erred in denying his motion to withdraw his guilty plea under State v. Slater, 198 N.J. 145, 156 (2009). We review a trial court's denial of a motion to withdraw a guilty plea for an abuse of discretion. See State v. O'Donnell, 435 N.J. Super. 351, 372 (App. Div. 2014).

In determining whether to grant a motion to withdraw a guilty plea, the trial court must consider: "(1) whether the defendant has asserted a colorable

claim of innocence; (2) the nature of the strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused." Slater, 198 N.J. at 157-58. Withdrawal of a guilty plea after sentencing may be permitted only "to correct a manifest injustice." R. 3:21-1.

"Trial courts should consider and balance all of the factors No factor is mandatory; if one is missing, that does not automatically disqualify or dictate relief." Slater, 198 N.J. at 162. The trial court must make "qualitative assessments about the nature of a defendant's reasons for moving to withdraw [the] plea and the strength of [the] case." Tate, 220 N.J. at 404.

Analyzing the Slater factors, the court found, based on its assessment of defendant's testimony and the other evidence in the case, that defendant did not set forth a colorable claim of innocence. The court also found the other Slater factors weighed against defendant because he waited until after sentencing and his direct appeal to bring the application, he obtained the benefit of a favorable plea agreement, and the State would be prejudiced due to the passage of time.

The court did not abuse its discretion by denying defendant's motion. Withdrawal of defendant's guilty plea was not necessary to correct a manifest injustice.

Affirmed.

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

A handwritten signature in black ink, appearing to be 'JLD', is written over the text 'file in my office.' and partially over the title 'CLERK OF THE APPELLATE DIVISION'.

CLERK OF THE APPELLATE DIVISION