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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-3070-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES W. RICHARDS,

Defendant-Appellant.

Submitted September 26, 2023 – Decided October 16, 2023

Before Judges Mawla and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 14-12-1237, 15-03-0708 and 15-06-0826.

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 (Alexis R. Agre, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Charles W. Richards appeals from the Law Division's April 14, 2022 order denying his petition for post-conviction relief ("PCR") without an evidentiary hearing. Upon a careful review of the record and applicable legal standards, we affirm substantially for the reasons set forth in the PCR judge's thorough and well-reasoned oral opinion.

The underlying facts concerning the offenses involved in this matter are set forth in our prior opinion denying defendant's direct appeal from his aggregate sentence of seventeen years subject to the No Early Release Act, for a string of fourteen first-degree armed robberies in Burlington and Camden Counties and a drug-related offense from his arrested. State v. Richards, Docket No. A-3625-16 (App. Div. Mar. 13, 2019) (slip op. at 1-13), certif. denied, C-239 (2019). The only issue in that appeal concerned the legality of a search of defendant's car when he was arrested. There, we affirmed the trial court's denial of defendant's suppression motion by finding that the arresting police officers had "ample reasonable suspicion the occupants of the vehicle were engaged in CDS activity, were the perpetrators of the robberies, and thus were armed and dangerous." Ibid.

In his petition for PCR, defendant argued that trial counsel and appellate counsel were ineffective for failing to obtain a copy of the 911 call that led to

his arrest and search of his car or argue the State committed a Brady¹ violation for not acquiring the tape. Further, he alleged since the 911 transcript or copy of the call was not turned over in discovery, the call never occurred.

The PCR court, after hearing the initial arguments, postponed the matter to see if a 911 audio recording was still available from Burlington County Central Communications. It was not. After the second oral argument, the court denied defendant's petition finding trial counsel's performance at the suppression hearing did not fall below the "wide range of professionally competent assistance."

The court reasoned that trial counsel argued vigorously on behalf of defendant and had a clear trial strategy in mind during her tough cross-examination of the State's witnesses. Moreover, defendant did not demonstrate how the 911 call would have exculpated him. The court indicated the call's existence was supported by the testimony of the officers, the computer aided dispatch ("CAD"), and the mobile video recording ("MVR") capturing the officers' radio transmissions.

On appeal, defendant presents the following contention:

THIS MATTER MUST BE REMANDED FOR AN
EVIDENTIARY HEARING BECAUSE THE

¹ Brady v. Maryland, 373 U.S. 83 (1963).

DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO INVESTIGATE THE PURPORTED 911 CALL, WHICH RESULTED IN THE SEIZURE OF CONTRABAND AND, ULTIMATELY, HIS GUILTY PLEAS.

"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). "Where, as here, the PCR court has not conducted an evidentiary hearing, we review its legal and factual determinations de novo." State v. Aburoumi, 464 N.J. Super. 326, 338 (App. Div. 2020) (citing State v. Jackson, 454 N.J. Super. 284, 291 (App. Div. 2018)).

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).

"To establish a prima facie case, defendant must demonstrate 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." R. 3:22-10(b). The defendant must establish, by a preponderance of the credible evidence, that he is entitled to the requested relief. State v. Nash, 212 N.J. 518,

541 (2013); Preciose, 129 N.J. at 459. 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. Cronin, 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."). "When a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable." State v. Savage, 120 N.J. 594, 617 (1990) (quoting Strickland, 466 U.S. at 691). "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). "Thus, an otherwise valid conviction will not be overturned merely because the defendant is dissatisfied with [their] counsel's exercise of judgment during the trial." Id. at 314.

Generally, "strategic miscalculations or trial mistakes are insufficient to warrant reversal 'except in those rare instances where they are of such magnitude as to thwart the fundamental guarantee of [a] fair trial.'" Castagna, 187 N.J. at 314-15 (alteration in original) (quoting State v. Buonadonna, 122 N.J. 22, 42 (1991)). Such circumstances are not present here.

A review of the record reflects trial counsel's strategy was to convey how vague the 911 call was, and that police concocted a tenuous match between a vague call for possible illegal activity and an armed robbery with absolute certainty. Trial counsel used the CAD report during her cross-examination of the officer at the suppression hearing, questioning the officer about the call's details and how the details did not match what was depicted on the officer's MVR.

Moreover, defendant has not stated how the omission of this call impacted his motion to suppress. The trial judge clearly heard the relevant details that led to the stop of the vehicle. There is nothing in the record that supports defendant's contention that the call's details would have resulted in the court granting his

motion to suppress. Moreover, there is no evidence that anything in the call was exculpatory to defendant or that the call did not occur. Defendant must do more than allege suppositions.

In sum, we discern no abuse of discretion in the PCR 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 defendant 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