

RECORD IMPOUNDED

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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-3225-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL A. MCLEOD, a/k/a
KNOCKOUT MICHAEL K.
MCLEOD,

Defendant-Appellant.

Submitted April 25, 2023 – Decided July 25, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Indictment No. 15-09-0135.

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

Matthew J. Platkin, Attorney General, attorney for
respondent (Regina M. Oberholzer, Deputy Attorney
General, of counsel and on the brief).

PER CURIAM

In May 2016, defendant Michael McLeod reached a plea agreement with the State after being charged in a thirteen-count indictment relating to human trafficking, endangering the welfare of a child, and prostitution. He pled guilty to first-degree conspiracy to commit human trafficking and second-degree facilitating human trafficking, admitting that he, along with his three co-defendants, recruited, enticed, and harbored two individuals—S.S. and T.P.¹—to engage in prostitution for purposes of acquiring profit. In accordance with the plea agreement, defendant was sentenced to an aggregate eighteen-year prison term with a four-year period of parole ineligibility, and the remaining eleven charges were dismissed.

Defendant appealed only his sentence. We affirmed his sentence on our sentencing oral argument calendar.

In 2019, defendant timely filed a post-conviction relief (PCR) petition, contending his trial counsel was ineffective during the plea negotiation process by failing to: (1) interview witnesses; (2) provide him with discovery so he could assist in his own defense; (3) negotiate a better plea deal; (4) provide

¹ We use initials to protect the identities of the victims. R. 1:38-3(c)(9).

accurate information about his sentence; (5) honor his request to file a motion to withdraw his plea; and (6) advocate adequately at sentencing.

PCR Judge Mitzy Galis-Menendez, who took defendant's plea and sentenced him, issued an order and written decision denying relief without an evidentiary hearing. Defendant appeals, raising multiple issues in a single point that:

[DEFENDANT] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL PRETRIAL BY FAILING TO INVESTIGATE, PROVIDE DISCOVERY, NEGOTIATE A PLEA DEAL, AND PROVIDE ACCURATE INFORMATION ABOUT HIS SENTENCE, THEREBY PRESSURING HIM INTO A PLEA; COUNSEL ALSO FAILED TO MOVE TO WITHDRAW HIS PLEA AND ADVOCATE ADEQUATELY AT SENTENCING.

Based upon our de novo review of the record, see State v. Harris, 181 N.J. 391, 415 (2004), the PCR judge prudently addressed the merits of defendant's claims, determining he did not set forth a prima facie case of ineffective assistance of counsel under the two-prong test prescribed by Strickland v. Washington, 466 U.S. 668 (1984).² The judge ruled defendant did not establish:

² Adopted for application under the New Jersey Constitution in State v. Fritz, 105 N.J. 42 (1987).

(1) counsel's performance was constitutionally deficient; and (2) defendant suffered resulting prejudice, meaning there was "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 687, 694. We address defendant's claims in the order presented.

Concerning defendant's claim that trial counsel did not investigate witnesses to uncover evidence to support his defense, Judge Galis-Menendez determined the allegation was a "bald assertion[]," State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999), and it was insufficient to establish a prima facie claim of counsel ineffectiveness. She stated defendant:

has not corroborated his position with supporting evidence; the potential witnesses have not been named, certifications of those witnesses have not been produced, and nothing has been offered to demonstrate how their testimony is material to his case. Without more, [defendant's] claim is a bald assertion. Therefore, [defendant] has failed to show how failing to interview relevant witnesses resulted in material deficiencies amounting to ineffective assistance of counsel.

We discern no reason to disagree with the judge.

With respect to the alleged lack of discovery provided by counsel, the judge also found defendant's claim was nothing more than a bald assertion. She stated:

First, the discovery claimed to not have been provided has not been described, named, or listed in any way to help identify it to this [c]ourt. Second, the claim does not elaborate on how the missing discovery created a material deficiency or alternatively, how it would have changed his plea. There is no evidence supporting [defendant's] assertions that trial counsel failed to provide discovery to him. Therefore, this claim is without merit.

We likewise conclude the judge's finding should stand. During defendant's plea colloquy, he advised the judge that he consulted with counsel; was satisfied with counsel's services; and entered his plea knowingly and voluntarily. Thus, there is no showing of counsel ineffectiveness.

Defendant's contention that counsel failed to negotiate a better plea deal was not addressed by the judge. Normally, when the judge fails to set forth, in a meaningful fashion, factual findings and conclusions of law as required by Rule 1:7-4, this court's review is impeded, and a remand is necessary. See Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015); see also Harris 181 N.J. at 409 ("Ordinarily our review would be based on the findings and conclusions of the PCR trial court." (citing R. 3:22-11; R. 2:2-1(a)(3))). However, here, to avoid unnecessary litigation delay, remand is not necessary because the record provided allows us to determine whether defendant set forth a prima facie case of counsel ineffectiveness for not negotiating a better plea agreement. See State

v. Rodriguez-Alejo, 419 N.J. Super. 33, 40 (2011) ("[Appellate courts] have the ability to make factual findings when necessary on appeal." (citing Pressler & Verniero, Current N.J. Court Rules, comment on R. 2:10-5 (2011))). Defendant's allegation that counsel did not negotiate a better plea deal is a bald assertion not supported by any facts indicating he could have reached a plea agreement resulting in a lighter sentence.

Regarding defendant's allegation that counsel misled and pressured him to accept a guilty plea, Judge Galis-Menendez held this argument "fails as the record holds contrary to this assertion. The transcripts reflect that [defendant] entered a guilty plea knowingly and voluntarily. Further, he stated under oath, on the record to having read and signed the plea forms." The judge reiterated that defendant stated he understood the plea agreement, he was satisfied with his counsel's services, and he gave a knowing and voluntary waiver of his right to go to trial. Additionally, the judge reasoned:

While [defendant] argues that counsel misled him to think he was going to be home sooner, there is no reference of that on the record and [defendant] was specifically asked if any promises were made. As such, [d]efendant has not established he was misled[,] and that counsel's performance was deficient as measured by an objective standard of reasonableness.

The judge's assessment of the record was correct. There is no support in the record for defendant's argument that, as a result of counsel's deficient performance, he believed he could not proceed to trial, even though he wanted to, leaving only the option to plea. The record also fails to show defendant was led to believe he would receive a lower period of parole ineligibility and a lower term of imprisonment based on community support.

Addressing defendant's argument that trial counsel was ineffective by failing to withdraw his guilty plea. The judge noted counsel actively filed motions—for severance, to dismiss the indictment, and to admit prior acts of the victim—on defendant's behalf, but defendant did not set forth any facts to indicate a motion to withdraw his guilty plea would have been successful. The judge added:

Despite [defendant] arguing that he was misinformed and that he would not have entered the guilty plea had he known his actual exposure, his plea hearing transcript states otherwise. [Defendant] stated he had enough time to speak to his attorney and understood his plea agreement as well as the maximum exposure under the law. Defense counsel is prohibited from filing frivolous motions. Therefore, [defendant] has made this claim without the support of any facts and cannot show that counsel's performance was "deficient as measured by an objective standard of reasonableness under prevailing professional norms." Strickland, 466 U.S. at 687-88.

We agree with the judge. There is no ineffective assistance of counsel for not filing an unmeritorious motion to withdraw his guilty plea. See State v. O'Neal, 190 N.J. 601, 618-19 (2007); State v. Worlock, 117 N.J. 596, 625 (1990). The record fails to show defendant's guilty plea was based on misinformation and without a factual basis.

Finally, the judge rejected defendant's allegations that counsel failed to advocate for a more lenient sentence by not raising any mitigating factors at sentencing, considering counsel did, in fact, raise mitigating factor eleven—the "imprisonment of the defendant would entail excessive hardship to himself or his dependents," N.J.S.A. 2C:44-1(b)(11). The judge noted she had the opportunity to consider the family members' testimony and letters submitted on behalf of defendant; thus, the claim was without merit.

Because defendant failed to establish a prima facie case of ineffective assistance of counsel under Strickland, Judge Galis-Menendez did not abuse her discretion in rejecting his request for an evidentiary hearing. See State v. Preciose, 129 N.J. 451, 462 (1992) (ruling a court reviewing a PCR petition based on claims of ineffective assistance has the discretion to grant an evidentiary hearing if a defendant establishes a prima facie showing in support of the requested relief); R. 3:22-10(b) ("A defendant shall be entitled to an

evidentiary hearing only upon the establishment of a prima facie case in support of [PCR]."). Moreover, there were no disputed issues as to material facts regarding defendant's entitlement to PCR that could not be resolved based on the existing record. See State v. Porter, 216 N.J. 343, 354 (2013).

To the extent that we do not address any arguments raised by defendant on appeal, we find they lack sufficient merit to warrant discussion in this written opinion. R. 2:11-3(e)(2)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION