

**NOT FOR PUBLICATION WITHOUT THE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-3373-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LACIANA E. TINSLEY, a/k/a
LACIANA WARD,
LACIANA MORELAND,
LACIANA SILAS,
LACIANA E. SEARS,

Defendant-Appellant.

Submitted March 14, 2023 – Decided July 6, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 17-04-0385.

Joseph E. Krakora, Public Defender, attorney for appellant (Ruth E. Hunter, 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 Laciana Tinsley appeals a Law Division order denying her post-conviction relief (PCR) petition without an evidentiary hearing. Her challenge arises from the sentence she received after pleading guilty to an amended charge of first-degree aggravated manslaughter of her husband by repeatedly hitting him in the head with a fire extinguisher. In accordance with the State's plea offer, she was initially sentenced to a twenty-four-year prison term subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. She appealed her sentence, and we ordered resentencing on our excessive sentencing oral argument because "the trial court failed to properly consider [her] mental health history and improperly considered municipal court charges that were dismissed." On remand, defendant's sentence was reduced to twenty-two years subject to NERA.¹

¹ At resentencing, the trial court applied the same aggravating and mitigating factors as it initially did but also applied mitigating factor nine (the character and attitude of defendant indicate that she is unlikely to commit another offense), N.J.S.A. 2C:44-1(b)(9).

Defendant did not appeal her new sentence but instead filed a PCR petition, contending her trial counsel was ineffective in not further reducing her sentence by failing to: (1) retain an expert psychological examination in the field of childhood sexual abuse; (2) consult a "clinical brain science expert" due to a fractured skull she suffered from being physically abused when she was nine months old; and (3) utilize medical reports to prove her diminished capacity to commit aggravated manslaughter. After PCR counsel was assigned, defendant's petition was amended to contend trial counsel failed to argue the trial court erred by improperly weighing the mitigating and aggravating sentencing factors.

PCR Judge John J. Burke, III rejected the petition. In his oral opinion, the judge stated defendant's sentencing claims should have been brought via direct appeal in accordance with State v. Acevedo, 205 N.J. 40 (2011). The judge pointed out PCR counsel conceded the sentence was not illegal, contrary to the PCR petition's contention. The judge elaborated:

An illegal sentence is one that, and the [c]ourt is quoting, "exceeds the maximum penalty provided in the code for a particular offense or sentence not imposed in accordance with the law." . . . [T]hat is where you can attack the sentence on post[-]conviction relief. That is held in State v. Murray, 162 N.J. 240 [, 247 (2000)], also State v. Marshall, 173 N.J. 343[,354-355 (2002)].

Those are all cited in support of as well as State v. Clark, 65 N.J. 426 [437, (1974)].

Additionally, the judge cited State v. Flores, 228 N.J. Super. 586, 591-92 (App. Div. 1988), where this court ruled the excessiveness of a sentence within the authorized sentencing guide is distinct from illegality, can only be raised on direct appeal and is an inappropriate ground for PCR. Because the judge determined there were no disputed issues of material fact and defendant did not establish a prima facie case of ineffective assistance of counsel, he reasoned an evidentiary hearing was not required.

In her appeal, defendant contends:

POINT I

DEFENDANT MUST BE GRANTED LEAVE TO APPEAL HER AMENDED JUDGMENT OF CONVICTION THAT RESULTED FROM HER RESENTENCING AS WITHIN TIME BECAUSE THE RESENTENCING COURT VIOLATED [RULE] 3:21-4 BY NOT ADVISING DEFENDANT OF HER RIGHT TO APPEAL.

POINT II

PCR COUNSEL WAS INEFFECTIVE FOR NOT RAISING ISSUES REQUESTED BY DEFENDANT, IN VIOLATION OF [RULE] 3:22-6(d); STATE v. RUE, 175 N.J. 1 (2002); AND STATE v. WEBSTER, 187 N.J. 254 (2006).

Upon a careful review of the record and applicable legal standards, we are unpersuaded and affirm substantially for the cogent reasons set forth by Judge Burke in his oral decision.

In addressing an ineffective assistance claim, this court follows the two-pronged standard formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984). See also 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. It is permissible to examine the second prong first and, based on that determination, adjudicate the case without ruling on the deficiency of counsel's performance. See State v. Gaitan, 209 N.J. 339, 350 (2012). Finally, the Strickland test also applies to claims of ineffective

assistance of PCR counsel. State v. Morrison, 215 N.J. Super. 540, 546 (App. Div. 1987).

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 of the requested relief. State v. Preciose, 129 N.J. 451, 462 (1992). The mere raising of a claim for PCR does not entitle a defendant to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). The court should only conduct a hearing if there are disputed issues as to material facts regarding entitlement to PCR that cannot be resolved based on the existing record. State v. Porter, 216 N.J. 343, 354 (2013). A PCR court's interpretation of the law is reviewed de novo. State v. Nash, 212 N.J. 518, 540-41 (2013).

Leave to Appeal Amended Judgment of Conviction (JOC)

Defendant argues she must be granted leave to appeal her amended JOC because at resentencing, the court: (1) violated Rule 3:21-4 by failing to advise her of her right to appeal; and (2) failed to advise her of the plea agreement's condition that she waived her right to appeal under Rule 3:9-3(d).

First and foremost, defendant failed to make these claims in her PCR petitions or before Judge Burke. We therefore should not consider the claims

because they were not "properly presented to the trial court" and do not "go to the jurisdiction of the trial court or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)); see also State v. Galicia, 210 N.J. 364, 383 (2012) (explaining a reviewing court will generally not consider an issue, including a constitutional issue, that is not raised before the trial court (citing Deerfield Ests., Inc. v. Twp. of E. Brunswick, 60 N.J. 115, 120 (1972))).

Nevertheless, in addressing the claims, we conclude the record belies defendant's assertion that she was not advised of her right to appeal. At her initial sentencing, the following colloquy occurred:

[The court]: And please know that when you waive your right to appeal that means you're giving up your right to appeal. However, if you were to decide to file an appeal anyway, which you have a right to do, of course, but if you were to file that appeal, the State could cancel the plea agreement, in which case you could withdraw your guilty plea. But the original charges would be reinstated against you. Do you understand that?

[Defendant]: Yes.

At resentencing, defendant did not appear. Her counsel told the judge that the prison where she was being held claimed there was no request for her transport to court, which counsel disputed. Yet, counsel stated defendant did

not object to resentencing proceeding without her appearance because the court would issue a written decision and her family members were in court to hear the judge's ruling. Moreover, throughout the resentencing, "appeal" is referenced. Under these circumstances, there is no merit to defendant's argument that she was unaware of her right to appeal her new sentence when she was aware of and successfully appealed her initial sentence.

The record also belies defendant's claim that the judge failed to advise her of the plea agreement's condition that she waived her right to appeal. At resentencing, the judge reiterated that her waiver of the right to appeal was in the plea form and remained a plea condition.

Not Raising Issues Set Forth in Pro Se PCR Petition

Defendant argues PCR counsel violated Rule 3:22-6(d) by failing to advance claims made in her pro se PCR petition for which experts were needed to obtain a significantly lesser sentence due to her mental illness. She argues PCR counsel only raised the meritless claim he included in the amended PCR petition: the court erred at sentencing by improperly weighing the mitigating and aggravating factors. She maintains the excessive sentence claim was procedurally barred by Rule 3:22-4 because it could have and should have been

raised on direct appeal, and the PCR court correctly found her sentence was "not an illegal sentence."

Again, because this is a claim that was not presented to Judge Burke, we need not consider it. Robinson, 200 N.J. 1, 20. That said, the record belies defendant's assertion that PCR counsel failed to address her claims that, as required by Rule 3:22-6(d), trial counsel failed to retain or consult with experts to reduce her sentence.

Rule 3:22-6(d) provides:

Counsel should advance all of the legitimate arguments requested by the defendant that the record will support. If defendant insists upon the assertion of any grounds for relief that counsel deems to be without merit, counsel shall list such claims in the petition or amended petition or incorporate them by reference. Pro se briefs can also be submitted.

PCR counsel complied with the rule. His brief asserted the trial court failed to recognize medical documentation of the "significant, physical, emotional, verbal and sexual abuse [she experienced] as a child and young woman." PCR counsel argued "the court was required to consider the defendant's mental condition and assign it due consideration." Finally, PCR counsel argued the court "failed to properly recognize that: (1) she was abused as an adult during the course of various volatile relationships and attempted


suicide on multiple occasions; and (2) she had . . . previously been hospitalized as a result of her mental instability." Therefore, PCR counsel did address defendant's pro se arguments.

Moreover, even though no expert opinions were presented to the trial court, defendant fails to establish what an expert would have stated and how that would have impacted her sentence. See State v. Jones, 219 N.J. 298, 312 (2014) (holding PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity the facts that [s]he wished to present."). Such "bald assertions" are lacking because defendant has not "allege[ed] facts sufficient to demonstrate counsel's alleged substandard performance." Cummings, 321 N.J. Super. at 170.

To the extent we have not expressly or impliedly addressed any of defendant's arguments, we have concluded they are without sufficient merit to warrant discussion in this 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