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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1798-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JESSE SANTANA,
a/k/a MIKE SANCHEZ,
MOISES SANTANA,
RAYMON S. SOTO,
SOTO R. RAMOND,
JUAN LOPEZ, and
ERIC SOTOMAYOR,

Defendant-Appellant.

Submitted May 28, 2024 – Decided June 11, 2024

Before Judges Mayer and Whipple.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Indictment No. 13-11-3234.

Jennifer Nicole Sellitti, Public Defender, attorney for
appellant (David A. Gies, Designated Counsel, on the
briefs).

Grace C. MacAulay, Camden County Prosecutor,
attorney for respondent (Jason Magid, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Jesse Santana appeals from an October 20, 2022 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

Defendant raises the following issues on appeal:

POINT ONE: THE PCR JUDGE ABUSED HIS DISCRETION WHERE HE DID NOT HOLD AN EVIDENTIARY HEARING TO QUESTION THE PSYCHIATRIST'S UNDERLYING BASIS FOR DIAGNOSING DEFENDANT SUFFERED FROM SCHIZOPHRENIA WHICH ANIMATED THE ACTIONS OF THE ACCUSED LEADING TO THE 2012 ROBBERIES.

POINT TWO: THE PROOF NEEDED TO ESTABLISH THE PREJUDICE PRONG OF THE STRICKLAND/FRITZ^[1] TEST IS SOMEWHAT LOWER THAN THAT DEMANDED BY A PREPONDERANCE OF THE EVIDENCE.

Defendant pled guilty to six counts of first-degree armed robbery, N.J.S.A. 2C:15-1(a)(2) and did not dispute any facts in the negotiated plea agreement. When asked if he understood the plea agreement, he confirmed he

¹ Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987).

understood. Defendant was asked if he had had enough time to discuss the matters with his counsel, whether counsel answered all his questions, and if he was satisfied with counsel's services; defendant answered "yes" to each inquiry. He then proceeded to sign the negotiated plea agreement, agreeing to the six counts of first-degree armed robbery and the eighteen-year prison sentence, subject to a parole ineligibility period under No Early Release Act, N.J.S.A. 2C:43-7.2. During a colloquy with the plea hearing judge, defendant was again asked whether he understood the plea agreement, and he testified he understood and consented to the terms.

During the sentencing hearing, defendant—notwithstanding the sentencing discussed in the plea agreement—requested a lesser term of fifteen years. Defendant asked for lenience "due to [his] lawyer misleading [him]." The sentencing judge denied defendant's request and sentenced him—according to the plea agreement—to eighteen years in prison, 85% of the term to be served without the possibility of parole, and five years of parole supervision. The sentencing judge found aggravating factors three, six, and nine applied; the court found no mitigating factors.

Defendant appealed his sentence and argued the court erred in not ordering a psychiatric evaluation based on his self-reporting of psychiatric issues; we

"remanded to the trial court for reconsideration of the sentence after defendant is sent for a psychiatric evaluation" and "for possible consideration of mitigating factor four." State v. Santana, No. A-2916-16 (App. Div. Jan. 16, 2018). Mitigating factor four permits the sentencing court to consider whether "[t]here were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense." N.J.S.A. 2C:44-1(b)(4).

On February 27, 2019, licensed psychiatrist Kenneth J. Weiss, M.D., examined defendant. In his April 2, 2019 letter, Dr. Weiss noted he reviewed Camden Police records from 2012, Virtua Health and Wellness-Camden medical records from November 2012, Department of Corrections medical records dating between 2003 to 2018, and other documents related to defendant's history. Dr. Weiss observed the police report of the 2012 incident did not indicate defendant had behavioral abnormalities. When defendant was examined at Virtua Health and Wellness-Camden in early November 2012, he was discharged with a diagnosis of substance abuse; according to those records, defendant denied any psychiatric history. Dr. Weiss opined, "[b]y all accounts, [defendant] ha[d] no formal psychiatric treatment history, but was acting strangely around the time of the incidents in late 2012." Dr. Weiss diagnosed defendant with schizophrenia, ultimately concluding defendant suffered from

serious mental illness in late 2012. In Dr. Weiss's opinion, defendant kept his experiences to himself and, as such, his illness had not come to the attention of mental health services.

At the resentencing hearing, the court considered mitigating factor four, as instructed on remand, but imposed the original sentence. The court found mitigating factor four applied but did not give it substantial weight because the report was prepared long after the incidents. The resentencing judge found Dr. Weiss merely speculated about defendant's condition during the incidents. When weighing the aggravating and mitigating factors on a qualitative as well as quantitative basis, the resentencing judge was clearly convinced the aggravating factors substantially outweighed the mitigating factors.

After resentencing, defendant filed a pro se PCR petition, alleging "ineffective counsel[] and mental health issues." In the certification submitted with his amended petition, defendant alleged his lawyer was deficient in failing to review discovery and trial strategy with him. Defendant also certified he was forced to enter a guilty plea because he feared his trial attorney would not adequately represent him at trial. Finally, defendant asserted he suffered from schizophrenia, bipolar disorder, anxiety, and depression, stating that "he was out of his mind, crazy, out of his body when the incidents occurred."

On October 20, 2022, the court denied defendant's petition without an evidentiary hearing. In a lengthy and thorough oral decision, the PCR judge found defendant had not shown that counsel's performance was deficient, as defendant could not "articulate the items in discovery that counsel neglected to review with him," and defendant "fail[ed] to identify a single avenue of trial strategy that counsel should have pursued or a valid defense of any of the event charge." In finding "defendant clearly understood the plea process," the PCR judge emphasized that, at the plea hearing, defendant had no questions relating to his guilty plea. The court found defendant failed to present a prima facie case of ineffective assistance of counsel and, therefore, was not entitled to evidentiary hearing. This appeal followed.

We will generally not review an issue not raised to the trial court unless it is jurisdictional or "substantially implicate[s] public interest." State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). When reviewing an issue not presented to the trial court, under Rule 2:10-2, the appellant must demonstrate plain error. An action is plain error if it is "clearly capable of producing an unjust result." R. 2:10-2. In a PCR petition, we focus on whether the error resulted in the denial of a fair decision on the merits. State v. Macon, 57 N.J. 325, 338 (1971).

Claims of ineffective assistance of counsel are governed by the two-prong test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984), and adopted by New Jersey courts in State v. Fritz, 105 N.J. 42, 58 (1987). Under the Strickland test, the defendant must show their counsel's performance "fell below an objective standard of reasonableness" and, as such, was deficient in their representation. Strickland, 466 U.S. at 687-88. The second prong requires the defendant to show "a reasonable probability that, but for counsel's unprofessional errors, the result . . . would have been different." State v. Hess, 207 N.J. 123, 146 (2011) (quoting Strickland, 466 U.S. at 694).

Raising a PCR claim does not entitle a defendant to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). An evidentiary hearing should be granted, however, if a trial court determines a defendant has stated a prima facie case for ineffective assistance and material issues of disputed facts necessitate a hearing. R. 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013).

Here, defendant argues, for the first time on appeal, his PCR counsel was ineffective because counsel knew or should have known defendant had mental health challenges that could have provided a defense. Defendant further contends negotiating a plea arrangement without first obtaining a psychiatric

examination demonstrates counsel's deficiency. Thus, according to defendant, the PCR judge abused his discretion by deciding that defense counsel's failure to request an examination did not constitute ineffective assistance of counsel. We disagree.

Defendant claims the PCR judge abused his discretion by not holding an evidentiary hearing to determine the underlying basis for defendant's schizophrenia diagnosis and erred when he "did not elaborate on why considering the sentencing transcript or . . . the plea transcript would have made a difference in the expert's opinion." Defendant contends Dr. Weiss's opinion "provides the basis for defendant's demonstration of a prima facie case under both prongs" of Strickland.

To substantiate a prima facie claim, a defendant must "allege facts sufficient to demonstrate counsel's alleged substandard performance." Cummings, 321 N.J. Super. at 170, and to overcome a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," Strickland, 466 U.S. at 689. As such, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Ibid. (quoting Michel v. Louisiana, 350 U.S. 91, 101 (1955)). Lastly, the "quality of counsel's performance cannot be fairly

assessed by focusing on a handful of issues[,] while ignoring the totality of counsel's performance in the context of the State's evidence of defendant's guilt."

State v. Castagna, 187 N.J. 293, 314 (2006).

Defendant did not establish a prima facie case for ineffective assistance of counsel. Defendant did not "identify the acts or omissions" constituting poor professional judgment and, thus, did not demonstrate counsel's substandard performance. See Strickland, 466 U.S. at 690; see also Cummings, 321 N.J. Super. at 170. Defendant's "bald assertions" of ineffective assistance of counsel are not enough. Cummings, 321 N.J. Super. at 170. Defendant asserts counsel was ineffective for failing to seek a psychiatric evaluation prior to the plea negotiations. We reject this argument.

There is no evidence in the record counsel knew, or should have known, defendant had mental health issues. Defendant did not inform counsel about his mental health issues. The suggestion that defendant suffered of mental health issues was contained in the police report and not any medical records provided by defendant. Additionally, in his presentence report, defendant claimed to be in good mental health but noted he took medication for psychiatric issues. Furthermore, during the plea colloquy, defendant denied he lacked competency regarding the plea. During the plea hearing, the judge asked defendant questions

to ascertain whether he understood the import of the plea hearing. Defendant answered the judge's question, affirmed he understood the plea, had the requisite competency to enter into the plea, and did so knowingly and voluntarily.

Here, defendant also failed to support his claim that a mental examination and subsequent diagnoses would have provided a viable defense. A defendant must demonstrate that but for counsel's error, there is reasonable probability they would have not pled guilty and, instead, would have gone to trial. State v. DiFrisco, 137 N.J. 434, 457 (1994). In this case, defendant simply stated he suffered from a mental health disorder and, therefore a viable defense might have been raised if a mental health evaluation had been completed. However, defendant failed to explain what such a defense would have accomplished had he proceeded to trial on all indicted charges.


Defendant's allegations are insufficient to substantiate a PCR petition, as he cannot satisfy the first prong of Strickland. Even if trial counsel was ineffective for not requesting a mental health evaluation, defendant did not demonstrate that such an evaluation would have affected the plea negotiations or sentence. As such, an evidentiary hearing "will not aid the court's analysis of whether the defendant is entitled to [PCR]," and need not be granted. See State

v. Marshall, 148 N.J. 89, 158 (1997). The PCR court did not exceed their discretion by denying defendant an evidentiary hearing.

Defendant's other arguments are without 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