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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-2222-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYLEEK A. LEWIS,

Defendant-Appellant.

Submitted May 28, 2024 – Decided June 6, 2024

Before Judges Mayer and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 14-08-0877.

Jennifer Nicole Sellitti, Public Defender, attorney for appellant (Steven M. Gilson, Designated Counsel, on the brief).

LaChia L. Bradshaw, Burlington County Prosecutor, attorney for respondent (Nicole Handy, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Tyleek A. Lewis appeals from a December 21, 2022 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

We incorporate facts leading to defendant's conviction as stated in State v. Greene, 242 N.J. 530 (2020).¹ In brief, a jury convicted defendant of felony murder, robbery, and burglary in connection with the shooting death of the victim. Id. at 535, 537. Defendant was sentenced to thirty-five years in prison with a thirty-year period of parole ineligibility on the felony-murder charge. Id. at 544. He filed a direct appeal challenging his conviction and sentence. See id. at 536, 544.

We reversed defendant's conviction and remanded for a new trial. State v. Greene, Nos. A-1382-15 and A-1614-15 (App. Div. Jan. 28, 2019) (slip op. at 2). Our Supreme Court granted defendant's petition for certification. State v. Greene, 239 N.J. 18 (2019).

The Court reversed our decision overturning defendant's conviction and remanded for our consideration of the remaining issues raised in defendant's direct appeal. Greene, 242 N.J. at 557.

¹ Defendant and co-defendant, Carey R. Greene, were tried together before the same jury.

On remand to this court, we affirmed defendant's conviction but remanded to the trial court to correct the judgment of conviction. State v. Lewis, No. A-1614-15 (App. Div. July 28, 2020) (slip op. at 3). The Court denied defendant's petition for certification after our remand decision. State v. Lewis, 245 N.J. 60 (2021).

While defendant's direct appeal was pending, he filed a pro se PCR petition. In a November 2, 2020 order, the trial court dismissed defendant's PCR petition without prejudice.

In March 2021, defendant re-filed his petition and submitted a supporting certification. PCR counsel submitted a supplemental certification with exhibits in support of defendant's PCR petition. Judge Terrence R. Cook heard oral argument on June 30, 2022. Judge Cook entered a December 21, 2022 order with an accompanying written decision denying defendant's PCR petition.

On appeal, defendant raises the following argument:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO CONSULT ADEQUATELY WITH HIM.

Defendant reasserts the same argument presented to, and rejected by, the PCR judge. Defendant's ineffective assistance of counsel claim is premised on

a purported lack of communication with his trial counsel and trial counsel's alleged failure to adequately meet with defendant prior to trial.

We affirm for comprehensive reasons stated in Judge Cook's written decision. We add only the following comments.

When a PCR judge does not conduct an evidentiary hearing, we review the denial of a PCR petition de novo. State v. Harris, 181 N.J. 391, 420-21 (2004); State v. Lawrence, 463 N.J. Super. 518, 522 (App. Div. 2020). A PCR judge's decision to proceed without an evidentiary hearing is reviewed for an abuse of discretion. State v. Vanness, 474 N.J. Super. 609, 623 (App. Div. 2023) (citing State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013)).

To establish a claim of ineffective assistance of counsel, a defendant must satisfy the two-prong Strickland test: (1) "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and (2) "the deficient performance prejudiced the defense." Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-prong test in New Jersey).

A PCR petitioner is not automatically entitled to an evidentiary hearing. State v. Porter, 216 N.J. 343, 355 (2013). Rule 3:22-10(b) provides that a defendant is entitled to an evidentiary hearing on a PCR petition only if

defendant establishes a prima facie case in support of PCR, material issues of disputed fact cannot be resolved by reference to the existing record, and an evidentiary hearing is necessary to resolve the claims for relief. Id. at 354 (citing R. 3:22-10(b)). The PCR court should grant an evidentiary hearing "if a defendant has presented a prima facie claim in support of [PCR]." State v. Preciose, 129 N.J. 451, 462 (1992).

Here, defendant failed to establish a prima facie case of ineffective assistance of counsel under both Strickland prongs. Thus, defendant was not entitled to an evidentiary hearing.

As our Court has held, "it is not the frequency of consultation that reveals whether a defendant has been effectively denied effective legal assistance. Rather, the proper inquiry is whether as a result of that consultation, counsel was able [to] properly[] investigate the case and develop a reasonable defense." State v. Savage, 120 N.J. 594, 617 (1990).

Here, trial counsel certified he met with defendant several times at the jail while defendant awaited trial. Additionally, trial counsel stated he conferred with defendant in a holding cell before every court appearance² and discussed


² According to trial counsel, there were at least thirty court appearances prior to trial.

defense strategies, discovery matters, and possible resolution of the case against defendant. Trial counsel also produced letters that counsel sent to the jail where defendant was being held, requesting to meet with defendant. Moreover, at none of the court appearances did defendant advise the judge that his attorney failed to review discovery with him. On this record, we are satisfied defendant failed to demonstrate his trial counsel was ineffective based on the failure to adequately consult with him.

Additionally, defendant failed to establish any prejudice as a result of the alleged ineffective assistance of his trial counsel as required under the second Strickland prong. Based on our review of the record, the pretrial judge explained the risks defendant faced if he elected to proceed to trial based on the strength of the State's evidence against him. Further, because defendant had a prior gun conviction, the pretrial judge stated defendant faced a potentially harsher sentence if he went to trial.

On this record, defendant was unable to establish a prima facie case of ineffective assistance of counsel under Strickland. As a result, no evidentiary hearing was required.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION