

**NOT FOR PUBLICATION WITHOUT THE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-2495-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JASON RAMIREZ,

Defendant-Appellant.

Argued May 28, 2024 – Decided June 5, 2024

Before Judges Sabatino and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 15-03-0245.

Kayla E. Rowe, Designated Counsel, argued the cause for appellant (Jennifer Nicole Sellitti, Public Defender, attorney; Kayla E. Rowe, on the brief).

Leandra L. Cilindrello, Assistant Prosecutor, argued the cause for respondent (Camelia M. Valdes, Passaic County Prosecutor, attorney; Leandra L. Cilindrello, of counsel and on the brief).

PER CURIAM

Defendant Jason Ramirez appeals from a November 1, 2022 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

In March 2015, a grand jury indicted defendant with charges of: first-degree murder, N.J.S.A. 2C:11-3(a)(1) or N.J.S.A. 2C:11-3(a)(2) (count one); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count two); and fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count three) for fatally stabbing Abraham Ramirez. Although the victim shared the same surname as defendant, they were not related.

Following negotiations in October 2015, defendant pled guilty to an amended charge of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), on count one. In exchange, the State agreed to dismiss counts two and three. The State also agreed to recommend a sixteen-year term of incarceration subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, along with other conditions and restitution, which are irrelevant to the issues raised on this appeal. The plea agreement reserved defendant's right to argue for a ten-year sentence, but stated he would accept a sixteen-year term if the court ordered it. Defendant acknowledged and signed the requisite plea and NERA forms.

The same judge who took the plea also sentenced defendant and later heard his PCR petition. The judge voir dired defendant regarding his right to a trial and informed him that by pleading guilty, he was waiving his right to a trial. The judge then advised defendant the entry of a plea would mean that any motions his attorney had filed or intended to file would not be considered by the court. He specifically addressed the fact a plea would prevent the court from considering motions "to suppress physical evidence such as a weapon that may have been used" and statements defendant gave to police. The judge advised defendant as follows: "If you were to win one or more such motions before trial, the [S]tate might not have enough evidence left at trial to prove you guilty beyond a reasonable doubt, but if I accept your guilty plea today, . . . [t]hese motions will not be heard"

Defendant acknowledged the judge's advice, waived his right to a trial and the court considering any motions, and proceeded with the plea. He testified he reviewed the plea forms with his attorney, who answered all his questions, and he was satisfied with his attorney's services.

Defendant's attorney then questioned him. Defendant acknowledged that he and counsel discussed his case "on at least four different occasions in the past several months." Further, defense counsel discussed the case "at length" with

defendant's mother and sister, and defendant and his family were aware defendant would be entering the plea. Defendant acknowledged that plea negotiations took place, and defense counsel represented he "told [defendant to] always expect that you're going to get what the [p]rosecutor recommends to the [c]ourt, and that is [sixteen] years, [eighty-five] percent without parole."

Defense counsel was aware defendant wanted a sentence lesser than sixteen years. However, defendant acknowledged that counsel "indicated to [defendant] it's highly unlikely that the [j]udge will do that" because "that's within the sole discretion of the [c]ourt."

Defendant then testified he met the victim on a street in downtown Paterson. He did not know the victim beforehand, but the victim invited defendant to his apartment for alcoholic drinks. There defendant had several drinks and then went to the bathroom. When he emerged, the victim confronted him, put his arm around defendant, and the two kissed. The victim put his tongue in defendant's mouth. At that point, defendant went to the kitchen grabbed a knife and stabbed the victim approximately eight times.

Defendant thought he heard the police, jumped out of an apartment window, and ran away, leaving some clothing behind. When police apprehended defendant approximately one week later, he cooperated and gave a statement.

Defendant acknowledged police administered his Miranda¹ rights before he gave the statement. Regardless, defense counsel then recounted that he advised defendant they could challenge the statement he gave police, which "could have possibly be[en] a violation of [defendant's] Miranda rights," which defendant acknowledged as well.

The prosecutor briefly cross-examined defendant about not asserting a claim of self-defense or blaming his actions on intoxication. Defendant agreed, acknowledged his actions caused the victim's death, and that he acted recklessly and with "extreme indifference to the value of human life."

Prior to defendant's sentencing, he wrote to the judge, without copying his attorney, claiming he was drunk during the incident and acted in self-defense. In response, at the sentencing hearing the judge asked defense counsel to voir dire defendant again to ascertain whether defendant was retracting the guilty plea. Before the questioning, defense counsel recounted that after he received the letter defendant sent the court, he advised defendant the court would not likely sentence him given the conflicting representations he made regarding the plea. Defense counsel stated that in his fifty years of practice, he would never counsel a client to plead guilty if they claimed they were not guilty just to take

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

advantage of the plea agreement. Defense counsel said he advised defendant that he would persuade the court to let him retract the plea and proceed to trial. Defendant then testified that his attorney had in fact counseled him in this fashion.

Moreover, defendant acknowledged his attorney explained the law of self-defense to him. However, after speaking with his attorney "at length regarding the letter, . . . [the] plea, [and] . . . all the facts contained in this matter," defendant testified his plea testimony was accurate and correct, and he wished to be sentenced in accordance with the plea agreement. The prosecutor then asked defendant if he still acknowledged that he stabbed the victim multiple times causing his death, and defendant said he did. The judge proceeded with the sentencing.

Defense counsel urged the judge to sentence defendant in accordance with the plea agreement. He argued several mitigating factors. Notably, counsel argued mitigating factor four applied, N.J.S.A. 2C:44-1(b)(4), because although his client's intoxication did not rise to the level of a defense, the judge should still consider that the intoxication excused or justified defendant's conduct, weighing against a harsher sentence.

The judge found aggravating factors three and nine, N.J.S.A. 2C:44-1(a)(3) and (9), and no mitigating factors. He sentenced defendant in accordance with the plea agreement to sixteen years in prison, subject to NERA and five years of parole supervision following his release. The judge imposed fines and penalties, as well as the restraints and restitution sought by the State. The judgment of conviction was entered November 27, 2015.

Defendant appealed from his sentence, which we considered on our sentencing oral argument calendar. His appellate attorney, different from trial counsel, argued the sixteen-year sentence was excessive in light of the fact the stabbing occurred because the victim tried to kiss defendant. Counsel argued defendant could have received a ten-year sentence and the court should have found mitigating factors three, five, eight, and thirteen, N.J.S.A. 2C:44-1(b)(3), (5), (8) and (13). We affirmed defendant's sentence.

On February 14, 2022, defendant inquired with the Office of the Public Defender (OPD) about whether an appeal was ever filed on his behalf. OPD responded the sentencing appeal was filed and advised defendant was "out-of-time to file a PCR petition" because he had five years from the entry of the judgment of conviction to do so.

On March 1, 2022, defendant filed his PCR petition. He argued his former defense counsel was ineffective for: not reviewing discovery with him to prepare for trial; improperly pressuring defendant to plead guilty; and failing to file a motion to suppress the evidence seized and his statement. Defendant certified counsel neither reviewed discovery nor discussed possible defenses with him. He claimed counsel never responded to him when he raised certain facts about his case, and instead "steadfastly maintained that if [defendant] went to trial, [he] would lose."

Defendant asserted he established a prima facie case of ineffective assistance of counsel and the court should order a plenary hearing. Further, the PCR claims were not procedurally barred because they raised constitutional claims. Moreover, he did not file for PCR because he was awaiting the outcome of his sentencing appeal, and OPD failed to notify him the appeal was unsuccessful in time for him to file his PCR petition. Nonetheless, once he learned the sentencing appeal outcome, he immediately filed the PCR petition.

The PCR judge found defendant's petition was time barred pursuant to Rule 3:22-12 and that defendant had not shown excusable neglect for why he failed to file a timely petition. Notwithstanding the time bar, the judge also adjudicated the merits of defendant's claims. He concluded counsel was not

ineffective for failing to move to suppress the evidence because defendant's statement was given after "a clear waiver of his Miranda rights" and his confession "was a very valid, self-inculpatory statement . . . describing in great detail how the offense was committed." Furthermore, a motion to suppress clothing that was recovered from the crime scene would not have succeeded, because the clothing was found in the victim's home, and defendant lacked a basis to object to the search of a home that was not his own.

Regarding the discussions between defense counsel and defendant, the judge noted defendant had previously testified he "had four visits from [defense counsel] at the jail, and that he reviewed his case." The judge found it "absurd" that counsel and defendant would be discussing anything "other than the discovery and the police reports." The judge noted the letter defendant sent prior to sentencing claiming self-defense "clearly acknowledged that he had . . . discussions about the strength of a Miranda motion with [counsel], . . . which was acknowledged by [defendant] as a reflection of a review of discovery."

The PCR judge found the decision not to pursue self-defense was to get a "much more favorable deal of a manslaughter conviction than of a murder conviction where [defendant] was exposed to thirty years with thirty years of parole ineligibility, life term, etcetera." The judge noted this "is a reflection of

[defense] counsel focusing on the right potential issues." The judge found no evidence to support defendant's claim he was coerced into entering the plea. He concluded counsel's performance did not fall "below the objective standard of reasonableness" and denied the PCR petition.

Defendant raises the following points on appeal:

POINT I – THE PCR COURT ERRED WHEN IT APPLIED THE TIME BAR UNDER RULE 3:22-12 TO [DEFENDANT]'S PCR PETITION. (RAISED BELOW).

POINT II – THE PCR COURT ERRED WHEN IT DENIED AN EVIDENTIARY HEARING WITH RESPECT TO [DEFENDANT]'S CLAIM PCR COUNSEL FILED THAT PLEA COUNSEL FAILED TO FILE ANY SUPPRESSION MOTIONS. (RAISED BELOW).

POINT III – THE PCR COURT ERRED WHEN IT REJECTED [DEFENDANT]'S VERIFIED CLAIM THAT PLEA COUNSEL FAILED TO REVIEW DISCOVERY RELATED TO AFFIRMATIVE DEFENSES THAT [DEFENDANT] WANTED TO ASSERT AT TRIAL. (RAISED BELOW).

POINT IV – THE PCR COURT ERRED WHEN IT REJECTED [DEFENDANT]'S VERIFIED CLAIM THAT HIS ATTORNEY'S INEFFECTIVE PRETRIAL REPRESENTATION FORCED [DEFENDANT] TO PLEAD GUILTY, EVEN THOUGH HE WANTED TO PROCEED TO TRIAL. (RAISED BELOW).

I.

Because the PCR judge reached the merits of defendant's petition, we dispense with a discussion of whether the petition was time-barred raised in Point I. Instead, we address the merits-based arguments in the remaining points raised on appeal.

We review a PCR court's findings where it has not held an evidentiary hearing de novo. State v. Harris, 181 N.J. 391, 420-21 (2004). The familiar Strickland standard requires a defendant show counsel rendered substandard professional assistance that prejudiced the outcome of the proceedings. Strickland v. Washington, 466 U.S. 668, 687 (1984); see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland standard).

Where there is a guilty plea, "a defendant must show that (i) counsel's assistance was not 'within the range of competence demanded of attorneys in criminal cases'; and (ii) 'that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial.'" State v. Aburoumi, 464 N.J. Super. 326, 339 (App. Div. 2020) (alteration in original) (quoting State v. Nunez-Valdez, 200 N.J. 129, 139 (2009)). A defendant must also "convince the court that a decision to reject

the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372 (2010); see also Aburoumi, 464 N.J. Super. at 339.

"[W]hen a petitioner claims his trial attorney inadequately investigated his case, he must assert the facts that an investigation would have revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999); R. 1:6-6. A defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." Ibid. He must provide facts to support his allegations. Ibid. This is because there is a strong presumption that counsel's performance fell within the wide range of reasonable representation. State v. Pierre, 223 N.J. 560, 578-79 (2015).

Indeed, counsel has no duty to investigate unfounded or meritless claims. Cummings, 321 N.J. Super. at 170. Counsel's duty is to make "reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." State v. Savage, 120 N.J. 594, 618 (1990) (quoting Strickland, 466 U.S. at 691). "Mere dissatisfaction with a 'counsel's exercise of judgment' is insufficient to warrant overturning a conviction." State v. Nash, 212 N.J. 518, 542 (2013) (quoting State v. Echols, 199 N.J. 344, 358 (2009)). Rather, "a [petitioner] must establish . . . trial counsel's actions did not equate

to 'sound trial strategy.'" State v. Castagna, 187 N.J. 293, 314 (2005) (quoting Strickland, 466 U.S. at 688-89).

Where a defendant asserts his attorney was ineffective by failing to file a motion, he must establish that the motion would have been successful. "It is not ineffective assistance of counsel for defense counsel not to file a meritless motion" State v. O'Neal, 190 N.J. 601, 619 (2007). For example, where a defendant complains his or her counsel should have filed a suppression motion, "the defendant not only must satisfy both parts of the Strickland test but also must prove that [their] Fourth Amendment claim is meritorious." State v. Fisher, 156 N.J. 494, 501 (1998).

A.

We reject defendant's assertion defense counsel was ineffective for not moving to suppress his statement or the physical evidence. Defendant failed to certify how either his statement or the items taken from the victim's apartment were obtained unlawfully. As the PCR judge noted, defendant was properly Mirandized and he had no Fourth Amendment right in the seizure of evidence from an apartment that was not his. Therefore, a suppression motion not only would have failed, but it would also have been meritless.

B.

There was also no basis to pursue a self-defense claim. Defendant did not certify facts showing self-defense was necessary, or how his actions could be considered self-defense. Moreover, the facts show the claim was not viable.

The use of force against another person is "justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person." N.J.S.A. 2C:3-4(a). There was no evidence the victim did anything other than kiss defendant, prompting him to walk into the kitchen, walk back to the victim, and stab him several times. A claim of self-defense would not have been viable because there is no evidence the victim used force justifying defendant stabbing him to death as self-defense.

We reach the same conclusion regarding the viability of an intoxication defense. "[W]hen the requisite culpability for a crime is that the person act 'purposely' or 'knowingly,' evidence of voluntary intoxication is admissible to disprove that requisite mental state." State v. Cameron, 104 N.J. 42, 53 (1986). For intoxication to diminish "the capacity to act purposely or knowingly, the intoxication must be of an extremely high level; it must have caused a 'prostration of faculties' in the defendant." State v. Sette, 259 N.J. Super. 156,

170 (App, Div. 1992) (quoting Cameron, 104 N.J. at 54). Nothing in the record, other than defendant's bald assertion, shows he was intoxicated when he stabbed the victim, let alone intoxicated to a level that prostrated his faculties.

C.


Finally, there is no evidence defense counsel forced defendant to plead guilty. As we recounted, defendant affirmed on his plea form and during the plea colloquy that he was satisfied with his attorney's service and was entering the plea voluntarily, without coercion and of his own free will. At sentencing, prior to allocution, the judge again confirmed the plea was made voluntarily. Defendant made these representations not only on defense counsel's questioning but in response to questions from the court. The record is devoid of any evidence of coercion. More importantly, given the substantially longer period of mandatory incarceration defendant was facing if he did not enter the plea, he has not shown a reasonable probability that he would have abandoned the plea and gone to trial for a first-degree murder offense.

Despite his present counsel's robust advocacy, none of defendant's claims on appeal persuade us he has made a prima facie showing of ineffective assistance of counsel. As a result, he was not entitled to an evidentiary hearing.

Any remaining arguments we have not addressed lack 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