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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2739-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHARLES F. SAWYER,
a/k/a CHARLIE SAWYER,

Defendant-Appellant.

Submitted June 4, 2024 – Decided June 19, 2024

Before Judges Rose and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Indictment No. 13-07-0746.

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

Christine A. Hoffman, Acting Gloucester County Prosecutor, attorney for respondent (Michael C. Mellon, Special Deputy Attorney General/Acting Assistant Prosecutor, on the brief).

PER CURIAM

Defendant appeals from a December 22, 2022 order, denying his post-conviction relief (PCR) petition without a hearing. Defendant claimed his trial counsel rendered ineffective assistance for failure to timely advise him of the State's plea offer. The State having withdrawn the offer before defendant accepted it, defendant proceeded to trial and was convicted of murder, felony murder, kidnapping, burglary, and related weapons offenses for the 2012 shooting death of his ex-wife. He was sentenced to an aggregate prison term of sixty-one years, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The State's plea offer limited defendant's sentencing exposure to an aggregate prison term of twenty-three years, subject to NERA.

On appeal, defendant raises a single argument for our consideration:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR NOT TIMELY INFORMING HIM OF THE STATE'S PLEA OFFER, WHICH HE WOULD HAVE ACCEPTED.

Guided by well-settled principles, we reject these contentions and affirm.

A defendant's right to effective assistance of counsel extends to the plea negotiation process. See Missouri v. Frye, 566 U.S. 134, 140 (2012). "If a plea

bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." Lafler v. Cooper, 566 U.S. 156, 168 (2012). To meet the first prong of the Strickland/Fritz test, a defendant must identify acts or omissions by trial counsel that were not "the result of reasonable professional judgment." Strickland v. Washington, 466 U.S. 688, 690 (1984); see State v. Fritz, 105 N.J. 42, 342 (1987).

"A defendant asserting plea counsel's assistance was ineffective may meet the first prong of the Strickland standard if the defendant can show counsel's representation fell short of the prevailing standards expected of criminal defense attorneys." State v. Vanness, 474 N.J. Super. 609, 624 (App. Div. 2023) (citing Padilla v. Kentucky, 559 U.S. 356, 366-67 (2010)). To establish prejudice under the second Strickland/Fritz prong in the context of plea negotiations, a defendant must demonstrate: "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court"; "the court would have accepted its terms"; and "the conviction or sentence, or both, under the offer's terms would have been less severe" than those imposed after trial. Lafler, 566 U.S. at 164.

"A plea agreement is . . . governed by contract-law concepts." State v. Pennington, 154 N.J. 344, 362 (1998). "It requires a meeting of the minds upon

the negotiated pleas and is an executory agreement since it depends on the approval of the sentencing court." State v. Smith, 306 N.J. Super. 370, 383 (App. Div. 1997). Under basic contract law principles, "[w]hen two parties reach a meeting of the minds and consideration is present, the agreement should be enforced." State v. Means, 191 N.J. 610, 622 (2007). Importantly, however, "the State is free to withdraw from a plea agreement before the agreement is accepted by the court." State v. Williams, 277 N.J. Super. 40, 47 (App. Div. 1994).

In the present matter, on June 10, 2015, the Criminal Division Presiding Judge "authorized a relaxation of plea cutoff[,], R. 3:9-2(g)[,], between [June 10, 2015] and June 30, 2015." The parties did not reach an agreement. Seven months later, on Wednesday, January 27, 2016, trial counsel received the State's twenty-three-year offer, and attempted to schedule "an attorney visit on Friday, but they had nothing available." Trial counsel conveyed the State's offer and his attempt to visit defendant in jail by correspondence dated January 29, 2016. In the letter, counsel explained:

Please note that if you are agreeable to the offer the judge must still approve the plea since we are on the eve of trial. The prosecutor and I are hopeful the judge will accept the plea in this matter because, as you are aware, the court rules do not allow plea negotiations after a case is put on the trial list unless there are

exceptional circumstances permitting it. We are hopeful that the court will accept there are exceptional circumstances here to allow the plea.

Jury selection was scheduled for the following Tuesday, February 2. Although defendant did not receive counsel's correspondence before the court date, he expressed interest in accepting the offer when speaking with counsel in the holding cell.

In the interim, on Sunday, January 31, then Prosecutor Sean Dalton rejected the trial prosecutor's attempt to resolve the matter via the thirty-three-year offer extended to trial counsel. In an email to the trial prosecutor, Dalton explained: "I was unaware of those discussions. On hom[i]cides, please talk to me before speaking with the family about possible plea. There is no reason for us to come off of 30. Please advise defense counsel." The State therefore withdrew its offer.

In a cogent oral decision, the PCR judge thoroughly addressed defendant's contentions in view of the two-pronged Strickland/Fritz standard. Addressing the first prong, the judge found "[trial] counsel acted with reasonable diligence and promptness in attempting to notify . . . defendant of the plea offer." Further, trial counsel "advised [defendant] that the judge must still approve the plea due to the case being on the eve of trial. This is because the court rules do not allow

for plea negotiations after a case is put on the trial list, unless there is an exceptional circumstance." The judge also rejected defendant's argument that "any delay in receiving the letter [wa]s . . . the fault of [trial] counsel." Instead, the delay was attributable to "the extended time frame apparent when sending mail to a county jail." The judge was satisfied "[trial] counsel took objectively reasonable steps in the three days the plea offer was on the table."

Turning to the second prong, the judge found "[d]efendant fail[ed] to meet this burden for several reasons." For example, there was no evidence in the record "that the court would have entertained this plea offer during the advanced stages of the proceedings"; "[d]efendant never signed any plea papers"; "the State had the ability to withdraw the offer at any time prior to the entry of the guilty plea and acceptance by the court"; and "both parties even expressed doubts about the viability of a plea agreement."

Having considered defendant's reprised contentions in view of the applicable law, we conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons set forth by the PCR judge in his well-reasoned decision. We simply add because the State withdrew the offer before the agreement was accepted by the trial court, an enforceable agreement was not formed. See Williams, 277

N.J. Super. at 47; see also Lafler, 566 U.S. at 164. Accordingly, even if trial counsel's performance could be deemed deficient, defendant failed to demonstrate a reasonable likelihood that his PCR claim would ultimately succeed on the merits. Because there was no prima facie showing of ineffective assistance of counsel, an evidentiary hearing was not necessary to resolve defendant's PCR claims. State v. Preciose, 129 N.J. 451, 462 (1992).

Affirmed.

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



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