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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3210-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAKEEM BRYANT a/k/a
SHAKEEM BRYAN,

Defendant-Appellant.

Submitted September 21, 2022 – Decided December 15, 2022

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Indictment No. 18-04-1028.

Joseph E. Krakora, Public Defender, attorney for
appellant (Howard W. Bailey, Designated Counsel, on
the brief).

Theodore W. Stephens II, Acting Essex County
Prosecutor, attorney for respondent (Frank J. Ducoat,
Special Deputy Attorney General/Acting Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Shakeem Bryant appeals from the December 21, 2020 order of the Law Division denying his first petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

I.

Defendant admitted that on June 22, 2017, a woman was on an East Orange street with her car. Defendant approached the victim when she was outside the car. While displaying a Glock handgun, defendant demanded the victim "give [him] everything," intending to take possession of her car. The victim dropped her possessions, including her car keys. Defendant picked up the keys, "jumped in the car and pulled off."

A grand jury indicted defendant, charging him with: (1) first-degree carjacking, N.J.S.A. 2C:15-2(a)(2); (2) second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b); and (3) second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a).

Pursuant to an agreement with the State, defendant entered a guilty plea to first-degree carjacking and second-degree unlawful possession of a weapon. The trial court sentenced defendant to an eleven-year term of imprisonment with an eighty-five percent period of parole ineligibility under the No Early Release

Act, N.J.S.A. 2C:43-7.2, for carjacking. On the weapon possession conviction, the court sentenced defendant to an eight-year term of imprisonment with a four-year period of parole ineligibility to run concurrent with the carjacking sentence. The court ordered both sentences run concurrent to three sentences imposed on defendant on different charges in other counties. As provided in the agreement, the State dismissed the possession of a weapon for an unlawful purpose count.

Defendant subsequently filed a petition for PCR alleging: (1) his trial counsel was ineffective because he allowed defendant to plead guilty to carjacking and did not move to dismiss that charge when the State had insufficient evidence the victim was at or near the vehicle when defendant took it; (2) his trial counsel was ineffective because he allowed defendant to plead guilty to robbery when defendant perpetrated no act of force; and (3) his plea was not voluntarily, knowingly, and intelligently given.

On December 21, 2020, Judge Ronald D. Wigler, who presided at defendant's plea hearing, issued a written opinion denying the petition without an evidentiary hearing. Judge Wigler explained that according to N.J.S.A. 2C:15-2(a),

[a] person is guilty of carjacking if in the course of committing an unlawful taking of a motor vehicle, as defined in R.S. 39:1-1, or in an attempt to commit an unlawful taking of a motor vehicle he:

(1) inflicts bodily injury or uses force upon an occupant or person in possession or control of a motor vehicle;

(2) threatens an occupant or person in control with, or purposely or knowingly puts an occupant or person in control of the motor vehicle in fear of, immediate bodily injury;

...

(4) operates or causes said vehicle to be operated with the person who was in possession or control or was an occupant of the motor vehicle at the time of the taking remaining in the vehicle.

Judge Wigler noted that subsection (a)(2) of the statute, the provision under which defendant was convicted, does not require that the victim be physically inside the structure of the vehicle for a carjacking to occur. See State v. Williams, 289 N.J. Super. 611, 616 (App. Div. 1996). Unlike subsections (a)(1) and (a)(4), which require the victim to be "in possession or control" of a vehicle, subsection (a)(2) requires only that the victim be "in control" of the vehicle when it was taken. The State need show only that defendant placed a person who was in control of the vehicle "within a heightened zone of danger with relationship to the subject vehicle." State v. Jenkins, 321 N.J. Super. 124, 131-32 (App. Div. 1999). Thus, the State must produce evidence related to the proximity of the

victim to the vehicle to show that they controlled the vehicle at the time it was taken to secure a conviction under subsection (a)(2).

Judge Wigler concluded that defendant's admission that he "jumped in the car" right after he made the demand for the victim's property "implies that there was a close temporal proximity to [defendant] approaching [v]ictim and [defendant] driving away in [v]ictim's vehicle, which further suggests that [the] [v]ictim was physically close to her vehicle." In addition, the judge found that the victim's proximity to her vehicle can be inferred from the affidavit of probable cause which shows that the victim was close enough to her vehicle to see defendant enter the car and flee.

Thus, Judge Wigler concluded, defendant failed to make a prima facie showing of ineffective assistance of counsel. Because there was sufficient evidence of the victim's proximity to the vehicle to support a carjacking conviction under subsection (2)(a), trial counsel cannot be considered to have been ineffective for not moving to dismiss that count of the indictment or for advising defendant to plea to that charge.

With respect to defendant's argument concerning robbery, the judge found that defendant "was not charged with, nor pled guilty to, robbery." Thus, the judge concluded, defendant's "argument [t]rial [c]ounsel failed to defend against

a non-existent robbery charge because he did not use any force is a meaningless assertion as to the effectiveness of [t]rial [c]ounsel." To the extent defendant intended to argue that trial counsel was ineffective in defending against the carjacking count because defendant did not use force, Judge Wigler noted that a conviction under subsection (2)(a) does not require an act of force. The State need prove only that the defendant used threats or put the victim in fear of immediate bodily injury. Those elements of the offense were present here, given that defendant admitted he displayed a handgun and demanded that the victim surrender her property.

Finally, Judge Wigler found that there was an adequate factual basis for defendant's plea and that "[t]here is nothing to suggest that [defendant] did not give his plea knowingly, voluntarily, and intelligently or that it did not comport with Rule 3:9-2." After reviewing the transcript of the plea hearing, Judge Wigler concluded defendant's "statements show that he had a full understanding of his plea agreement[,] . . . that his plea was given freely[,] and that he "had not raised any facts to contradict the validity of his plea"

A December 21, 2020 order dismissed defendant's PCR petition without an evidentiary hearing.

This appeal followed. Defendant makes the following arguments.

POINT I

THE COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS ASSERTION THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

A. THE PREVAILING LEGAL PRINCIPLES REGARDING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL, EVIDENTIARY HEARINGS, AND PETITIONS FOR POST-CONVICTION RELIEF.

B. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO FULLY EXPLAIN THE LAW TO HIM PRIOR TO HIS GUILTY PLEA.

C. DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY PRESSURED HIM INTO ACCEPTING A GUILTY PLEA WHEN THE FACTS DID NOT SUPPORT A CONVICTION FOR CARJACKING.

II.

Under Rule 3:22-2(a), a defendant is entitled to post-conviction relief if there was a "[s]ubstantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of the State of New Jersey" "A petitioner must establish the right to such relief by a preponderance of the credible evidence." State v. Preciose, 129 N.J.

451, 459 (1992). "To sustain that burden, specific facts" which "would provide the court with an adequate basis on which to rest its decision" must be articulated. State v. Mitchell, 126 N.J. 565, 579 (1992).

The Sixth Amendment to the United States Constitution and Article I, Paragraph 10 of the New Jersey Constitution guarantee criminal defendants the right to the effective assistance of counsel. State v. O'Neil, 219 N.J. 598, 610 (2014) (citing Strickland v. Washington, 466 U.S. 668, 686 (1984); State v. Fritz, 105 N.J. 42, 58 (1987)). To succeed on a claim of ineffective assistance of counsel, the defendant must meet the two-part test established by Strickland, and adopted by our Supreme Court in Fritz. 466 U.S. at 687; 105 N.J. at 58.

Under Strickland, a defendant first must show that his or her attorney made errors "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." 466 U.S. at 687. Counsel's performance is deficient if it "[falls] below an objective standard of reasonableness." Id. at 688.

A defendant also must show that counsel's "deficient performance prejudiced the defense[.]" id. at 687, because "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "A reasonable probability is a probability

sufficient to undermine confidence in the outcome" of the trial. Ibid. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. at 697; State v. Marshall, 148 N.J. 89, 261 (1997). "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." Strickland, 466 U.S. at 697.

We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. State v. Brewster, 429 N.J. Super. 387, 401 (App. Div. 2013) (citing Marshall, 148 N.J. at 157-58). A hearing is required only when: (1) a defendant establishes a prima facie case in support of PCR; (2) the court determines that there are disputed issues of material fact that cannot be resolved by review of the existing record; and (3) the court determines that an evidentiary hearing is required to resolve the claims asserted. State v. Porter, 216 N.J. 343, 354 (2013) (citing R. 3:22-10(b)). "A prima facie case is established when a defendant demonstrates 'a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.'" Id. at 355 (quoting R. 3:22-10(b)).

"[T]o establish a prima facie claim, a petitioner must do more than make bald assertions that he was denied effective assistance of counsel." Ibid. (quoting State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999)). A PCR petition must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity[.]" State v. Jones, 219 N.J. 298, 312 (2014), "facts sufficient to demonstrate counsel's alleged substandard performance." Porter, 216 N.J. at 355 (quoting Cummings, 321 N.J. Super. at 170); see also R. 3:22-10(c).

Having carefully reviewed defendant's arguments in light of the record and applicable legal principles, we affirm the December 21, 2020 order for the reasons stated by Judge Wigler in his thorough and well-reasoned written opinion. In challenging the December 21, 2020 order, defendant relies solely on his claims in his verified petition that he was not armed on the day in question and did not speak to or interact with the victim in any way before he stole an empty vehicle. Defendant admits to having committed theft, but to not understanding that theft was a different offense than carjacking. He does not explain, however, how he purportedly took control of the victim's vehicle without interacting with the victim in any way or why he would falsely admit to displaying a Glock handgun and demanding the victim "give [him] everything"

with the intention of taking her car. Defendant's claims, which contradict his sworn testimony at his plea hearing, are nothing more than bald, facially incredible assertions that do not constitute a prima facie case of ineffective assistance of counsel.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION