



State of New Jersey v. Anthony Balaam

2012 | Cited 0 times | New Jersey Superior Court | September 24, 2012

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Submitted September 12, 2012

Before Judges Koblitz and Lisa.

Defendant Anthony Balaam appeals from the June 25, 2010 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant was convicted of fifteen crimes including the knowing or purposeful murders,

N.J.S.A. 2C:11-3(a)(1) and (2), and aggravated sexual assaults, N.J.S.A. 2C:14-2(a), of four prostitutes in the Trenton area between 1994 and 1996. He was spared the death penalty by the jury and, on January 26, 2001, was sentenced to four consecutive life terms, each with thirty years of parole ineligibility. We affirmed defendant's conviction and sentence on direct appeal in an unpublished opinion. *State v. Balaam*, No. A-3688-00 (App. Div. May 16, 2003), certif. denied, 177 N.J. 496 (2003). In his PCR appeal, defendant argues that his trial and appellate attorneys were ineffective. After reviewing the record in light of the contentions advanced on appeal, we affirm.

On November 29, 2006, ten months beyond the five-year time period permitted by Rule 3:22-12(a), defendant filed a PCR petition, indicating that on June 26, 2003, he wrote the Office of the Public Defender seeking to file a petition in the event the New Jersey Supreme Court denied certification. He also certified in his petition that on August 12, 2005, he again wrote the Office of the Public Defender seeking to file a PCR petition. Defendant supplied copies of these handwritten letters, the second of which was notarized on August 22, 2005.

The PCR judge determined that defendant did not demonstrate excusable neglect and denied PCR on that basis. However, he also reviewed each contention raised by defendant and denied relief based on the substantive claims.

On appeal defendant raises the following issues:

POINT I: DEFENDANT'S PCR PETITION SHOULD NOT HAVE BEEN TIME-BARRED.

POINT II: DEFENDANT'S CONVICTIONS MUST BE REVERSED DUE TO COUNSELS' INEFFECTIVENESS; IN THE ALTERNATIVE, THIS MATTER MUST BE REMANDED FOR AN



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EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF COUNSELS' INEFFECTIVENESS.

A. TRIAL AND APPELLATE COUNSEL FAILED TO RAISE THAT DEFENDANT'S INVOLUNTARY CONFESSIONS VIOLATED THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION. (Partially Raised Below)

B. TRIAL AND APPELLATE COUNSEL FAILED TO RAISE THAT DEFENDANT APPEARED BEFORE PROSPECTIVE JURORS IN RESTRAINTS.

C. TRIAL AND APPELLATE COUNSEL FAILED TO RAISE THE ADMISSION OF OTHER-CRIMES OR "WRONGS" EVIDENCE, AND THE OMISSION OF A LIMITING INSTRUCTION THERETO.

D. APPELLATE COUNSEL FAILED TO RAISE THE STATE'S NOT DISCLOSING THE IDENTITY OF A CONFIDENTIAL INFORMANT.

E. THE CUMULATIVE ERRORS MANDATE THAT DEFENDANT'S CONVICTIONS BE REVERSED OR THAT HE BE AFFORDED AN EVIDENTIARY HEARING.

We agree with defendant that he demonstrated excusable neglect for the ten-month delay in filing the PCR petition.

In *State v. McQuaid*, 147 N.J. 464, 485 (1997), the Supreme Court held the following:

Notwithstanding Rule 3:22-12 . . . a court may relax the time bar if adherence to it would result in an injustice. See [*State v.*] *Mitchell*, 126 N.J. [565,] 576 [(1992)]. When determining whether to relax the time bar, we stated in *Mitchell* that a court should consider "the extent and cause of the delay, the prejudice to the State, and the importance of the petitioner's claim in determining whether there has been an 'injustice' sufficient to relax the time limits." *Id.* at 580.

See also *State v. Norman*, 405 N.J. Super. 149, 159 (App. Div. 2009) (holding "[e]xcusable neglect provides the means for a court to address and correct a criminal judgment" where following it would lead to an injustice). Rule 3:22-12 also permits a court to review a PCR petition filed more than five years from the date of the judgment of conviction "if the petition alleges facts demonstrating that the delay was due to the defendant's excusable neglect." *State v. Mitchell*, 126 N.J. 565, 576 (1992) (citing *State v. Sloan*, 226 N.J. Super. 605, 612 (App. Div.), cert. denied, 113 N.J. 647 (1988)). "If the petitioner does not allege sufficient facts [to show excusable neglect], the Rule bars the claim." *Ibid.* (citations omitted). Under the facts alleged here, the strictures of Rule 3:22-12 should have been relaxed to allow the merits of defendant's petition to be heard. Defendant was not personally notified of the five-year time limitation on filing PCR petitions as currently required. R. 3:21-4(h). In addition,



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defendant's timely request of counsel to file a PCR petition is documented.

To establish a prima facie claim of ineffective assistance of counsel, a convicted defendant must demonstrate a reasonable likelihood of success under the Strickland/Fritz test.¹ *State v. Preciose*, 129 N.J. 451, 463-64 (1992). Under this two-part test, a defendant must establish that counsel's performance was deficient by showing that "counsel's representation fell below an objective standard of reasonableness." *Strickland*, supra, 466 U.S. at 687-88, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. Second, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. "As a general rule, strategic miscalculations or trial mistakes are insufficient to warrant reversal 'except in those rare instances where they are of such magnitude as to thwart the fundamental guarantee of [a] fair trial.'" *State v. Castagna*, 187 N.J. 293, 314-15 (2006) (alteration in original) (quoting *State v. Buonadonna*, 122 N.J. 22, 42 (1991)). Additionally, a defendant's dissatisfaction with his or her counsel's exercise of judgment is not sufficient to overturn an otherwise valid conviction. *Id.* at 314.

Defendant confessed to the four murders and his DNA was found on two of the victims. Although defendant was afforded a Miranda² hearing, he maintains that his attorney's failure to argue at the end of the hearing deprived him of effective representation. He claims his confession was involuntary as it was the product of extensive questioning. Defendant also claims that the trial court allowed jurors to see him in handcuffs, although the record does not support such a claim. Additionally, he claims that the admission, by consent of defense counsel, that his initial arrest was for a motor vehicle complaint so as to explain to the jury why he was originally speaking to the police, was unduly prejudicial. He maintains that trial and appellate counsel were ineffective in not raising these issues. He also argues that appellate counsel was ineffective in not raising the issue that the State should have been required to disclose the identity of a confidential informant who told the police what defendant was wearing on the night of one of the murders, thereby inducing defendant to confess to that murder. He argues finally that these failures of counsel cumulatively meet the Strickland/Fritz test or at least require an evidentiary hearing.

It is in the judge's discretion whether or not to hold an evidentiary hearing. *Preciose*, supra, 129 N.J. at 462. Courts, generally, grant such a hearing when a PCR petition is grounded on ineffective assistance of counsel because "the facts often lie outside the trial record and because the attorney's testimony may be required." *Ibid.* However, an evidentiary hearing need not be granted when a defendant fails to proffer a prima facie showing of ineffective assistance of counsel. *Ibid.*

The PCR judge carefully considered each of defendant's claims; his findings are adequately supported by sufficient credible evidence in the record, *State v. Locurto*, 157 N.J. 463, 472 (1999); and he properly concluded that defendant failed to demonstrate a reasonable likelihood of success under the Strickland/Fritz test. Accordingly, we affirm substantially for the reasons stated by the judge in



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his thorough written decision.

Affirmed.

1. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); State v. Fritz, 105 N.J. 42, 58 (1987).

2. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

