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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-1802-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

STEVEN P. RINCK,
a/k/a STEVEN PAUL RINCK,
and STEVEN RINCK,

Defendant-Appellant.

Submitted March 21, 2022 – Decided May 17, 2022

Before Judges Rothstadt and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 13-02-0373.

Joseph E. Krakora, Public Defender, attorney for appellant (David A. Gies, Designated Counsel, on the briefs).

Lori Linskey, Acting Monmouth County Prosecutor, attorney for respondent (Monica do Outeiro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Steven P. Rinck appeals from the June 1, 2020 denial of his first petition for post-conviction relief (PCR) without an evidentiary hearing. As we explained in our earlier opinion affirming defendant's conviction, a jury convicted defendant, "a former police confidential informant . . . of kidnapping, robbery and other crimes he committed while posing as a law enforcement officer and threatening two of his victims at gunpoint." State v. Rinck (Rinck I), No. A-3708-15 (App. Div. July 23, 2018) (slip op. at 2). We also noted that defendant was sentenced to "an aggregate extended-term sentence of twenty years, subject to a No Early Release Act . . . , N.J.S.A. 2C:43-7.2, eighty-five percent period of parole ineligibility." Ibid. Thereafter, on March 8, 2019, the Supreme Court denied defendant's petition for certification. State v. Rinck, 237 N.J. 166 (2019).

The facts leading to defendant's conviction are well known to the parties and are set forth in detail in our earlier opinion. For our present purposes, we do not need to repeat them here. See Rinck I, slip op. at 2-12.

On April 5, 2019, defendant filed a pro se petition for PCR. In a subsequently filed amended petition, defendant asserted the reasons supporting his petition. Specifically, he raised claims of ineffective assistance of trial

counsel on the grounds that counsel failed to investigate the possibility of a diminished capacity defense, failed to "object to evidence and allowed hearsay statements . . . into evidence," and failed to "relay"¹ a plea offer under which the State would recommend a ten-year sentence and which defendant allegedly would have accepted. Notably, defendant asserted these claims in a conclusory manner and did not certify any facts or include any exhibits in support of his claims.

On April 5, 2020, Judge Ellen Torregrossa-O'Connor considered the parties' arguments on defendant's petition. On June 1, 2020, the judge issued an order denying relief, stating her reasons in a comprehensive sixty-two-page written decision.

In her decision, after reviewing the history of this case in detail and defendant's assertions on PCR, the judge first determined defendant was not procedurally barred from raising his PCR claim on his first petition because, although the allegations were "known to [defendant] during his direct appeal,"

¹ During oral arguments on his PCR petition, PCR counsel clarified, "clearly a plea was communicated, . . . there[was] no question that there was discussion about a ten-year plea. The problem [was] what was communicated to [defendant] and what he understood. And I think that [defendant's trial counsel] gave him an overly optimistic viewpoint of what would happen at trial and/or appeal."

it "would not have been suitable for a determination based solely upon the trial record" since the claim required "facts and information beyond that which can be derived from a record."

Turning to the merits of his claims, the judge observed defendant's "greatest deficiency" was "the absolute absence of certified facts and information to support [his] petition," and the judge determined that, viewing the facts in a light most favorable to the defendant, the record was "antithetical" to his claims.

As to claims his trial counsel was ineffective in failing to communicate a plea, according to the judge, defendant did not provide any evidence, certification, or specificity in support of that claim; and the transcript of the December 2, 2015 pretrial conference demonstrated, through defendant's own testimony, that trial counsel communicated the plea offer and that defendant understood the plea offer and his sentencing exposure. As for any claim that trial counsel miscommunicated the plea offer by overestimating defendant's likeliness of success at trial or on appeal, the judge determined defendant again did not support that claim with any exhibits, certifications, or affidavits containing anything to suggest counsel gave inaccurate advice.

Moreover, regarding claims his trial counsel failed to investigate a possible diminished capacity defense, the judge determined the transcript of the December 8, 2015 pretrial conference demonstrated there was no indication before the police report revealed such that a diminished capacity defense was available, and, after counsel was put on notice, he determined not to pursue a diminished capacity defense only after conferring with defendant. Again, the judge noted, defendant did not provide any support to suggest counsel's decision to proceed to trial fell short of "the objective standard of reasonableness for trial counsel in this situation." Further, according to the judge, nothing in defendant's petition or the record, including defendant's mental health history referenced in his presentence report, supported that a diminished capacity defense would have been a viable defense.

Finally, the judge cited to Rule 3:22-10(e)(2) and noted, "[t]o grant an evidentiary hearing . . . would violate the prohibition on evidentiary hearings for 'vague, conclusory, and speculative' allegations." According to the judge, defendant "failed to make a prima facie claim that counsel was deficient," so he was not entitled to an evidentiary hearing. This appeal followed.

On appeal, defendant argues the following points:

POINT I

THE RECORD REQUIRES DEVELOPMENT THROUGH AN EVIDENTIARY HEARING IN ORDER TO RESOLVE DEFENDANT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM INVOLVING THE FAILURE TO INVESTIGATE A POSSIBLE DIMINISHED CAPACITY DEFENSE.

POINT II

THE RECORD REQUIRES DEVELOPMENT THROUGH AN EVIDENTIARY HEARING IN ORDER TO RESOLVE DEFENDANT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM INVOLVING HIS DECISION TO PLEAD NOT GUILTY.

POINT III

DEFENDANT'S APPELLATE COUNSEL DID NOT ADDRESS HIS TRIAL ATTORNEY'S FAILURE TO INVESTIGATE THE POSSIBILITY OF A DIMINISHED CAPACITY DEFENSE. (NOT RAISED BELOW).

We are unpersuaded by defendant's contentions. First, as to defendant's argument about appellate counsel, we conclude it is not properly before this court as defendant never raised any issue about appellate counsel in his PCR petition. For that reason, we do not consider that claim. See State v. Witt, 223 N.J. 409, 419 (2015) ("For sound jurisprudential reasons, with few exceptions, our appellate courts will decline to consider questions or issues not properly

presented to the trial court when an opportunity for such a presentation is available." (quoting State v. Robinson, 200 N.J. 1, 20 (2009)).

Second, as to defendant's two contentions about the ineffective assistance of trial counsel, we conclude that his arguments lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Torregrossa-O'Connor in her thorough written decision.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION