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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-0469-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

OMAR SHAHEER THOMAS,

Defendant-Appellant.

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Submitted January 24, 2017 – Decided June 29, 2017

Before Judges Reisner and Summers.

On appeal from Superior Court of New Jersey,  
Law Division, Morris County, Indictment Nos.  
04-02-0173, 04-02-0174, and 04-02-0175.

Joseph E. Krakora, Public Defender, attorney  
for appellant (William Welaj, Designated  
Counsel, on the brief).

Fredric M. Knapp, Morris County Prosecutor,  
attorney for respondent (John McNamara, Jr.,  
Supervising Assistant Prosecutor, of counsel  
and on the brief).

PER CURIAM

Defendant Omar Shaheer Thomas appeals from a May 6, 2015  
order denying his petition for post-conviction relief (PCR)  
without an evidentiary hearing. Defendant argues on appeal:

POINT I

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR POST CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO FULLY ADDRESS HIS CONTENTION THAT HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION AT THE TRIAL LEVEL.

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

B. TRIAL COUNSEL DID NOT ADEQUATELY REPRESENT THE DEFENDANT ARISING OUT OF COUNSELS' FAILURE TO THOROUGHLY DISCUSS WITH HIM ALL RELEVANT RAMIFICATIONS ASSOCIATED WITH THE DECISION WHETHER OR NOT TO TESTIFY, AS A RESULT OF WHICH HE DID NOT TESTIFY IN HIS OWN DEFENSE AT TRIAL.

C. THE DEFENDANT DID NOT RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL AS A RESULT OF THE FAILURE OF THE DEFENDANT TO TESTIFY AT THE MIRANDA HEARING DUE TO COUNSEL'S COERCION.

For the reasons that follow, we affirm.

The procedural history and trial evidence are detailed in our eighty-nine page opinion affirming defendant's convictions on direct appeal, and remanding for merger of weapons offenses. State v. Thomas, A-3347-08 (App. Div. April 19), certif. denied, 216 N.J. 86 (2013). A brief summary will suffice here.

Prior to the trial, Judge Salem Vincent Ahto conducted a seventeen-day Miranda<sup>1</sup> hearing and denied defendant's motion to suppress his statement. Both our court and our Supreme Court denied defendant's motion for leave to file an interlocutory appeal.<sup>2</sup> After a twenty-nine day trial, the jury found defendant guilty of two counts of first-degree murder and related offenses committed during an armed robbery of a computer-game retail store. Judge Ahto sentenced defendant to two consecutive terms of life imprisonment without parole eligibility for each murder conviction, consecutive to an eighteen-year term of imprisonment, subject to eighty-five percent parole ineligibility pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2.

Defendant filed a PCR petition alleging that trial counsel<sup>3</sup> was ineffective for coercing him in waiving his right to testify at the motion to suppress hearing and at trial, and appellate

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

<sup>2</sup> Defendant's subsequent motion for reconsideration of the motion to suppress was denied by Judge Ahto.

<sup>3</sup> Defendant was represented by two attorneys throughout the proceedings, but did not specify which one, or that both were ineffective.

counsel failed to raise the issue on direct appeal.<sup>4</sup> On May 6, 2015, Judge Ahto entered an order denying PCR relief without an evidentiary hearing.

In his oral decision, the judge found that defendant failed to meet the requirements of Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987), to establish a prima facie case of ineffective assistance of counsel, and therefore was not entitled to an evidentiary hearing. Judge Ahto noted that defendant did not certify what facts he would have presented through his testimony that would have altered the outcome of the trial. The judge cited the trial transcript where he advised defendant of his right to testify, and that defendant unequivocally exercised his right to remain silent. The judge recalled that, even though defendant was told on multiple occasions at trial he had the right to testify, at no time did he "either by word or gesture indicate that he had a desire to testify."

The judge further reasoned that counsel's decision not to call defendant as a witness at the Miranda hearing or trial was

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<sup>4</sup> Defendant initially filed a pro se PCR petition that was determined to be deficient. After defendant was appointed counsel, an amended petition was filed to correct the deficiencies.


strategic. If defendant had testified, he would have been cross-examined regarding his inculpatory statements to police. In addition, defendant's contacts with the victims, the crime scene, and his co-defendants, would have been fodder for questioning and would have plausibly connected him to the crime. Also, defendant's credibility would have been further attacked based upon his prior criminal record.

Because there was no merit to the claim that trial counsel was ineffective for allegedly coercing defendant to waive his right to testify at the Miranda hearing and at trial, Judge Ahto found that appellate counsel was not ineffective for raising a meritless claim.

Our examination of defendant's claims and review of the record convinces us that defendant was not denied effective assistance of trial counsel or appellate counsel, and there was no need for an evidentiary hearing. We affirm substantially for the reasons set forth in Judge Ahto's well-reasoned oral decision. We only add that defendant's failure to present any competent evidence in the form of a certification as to the substance of his potential testimony rendered his PCR allegations nothing more than "bald assertions," which fall short of establishing a prima facie claim of ineffective assistance. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION