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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-0545-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

THOMAS T. HAWKINS,

Defendant-Appellant.

Submitted October 12, 2017 – Decided October 30, 2017

Before Judges Alvarez and Geiger.

On appeal from the Superior Court of New
Jersey, Law Division, Mercer County,
Indictment No. 11-07-0721.

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

Angelo J. Onofri, Mercer County Prosecutor,
attorney for respondent (Scott Gershman,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Thomas Hawkins appeals from the July 21, 2015 order
denying his petition for post-conviction relief (PCR) without an
evidentiary hearing. We affirm.

On September 17, 2010, defendant robbed a dry cleaning establishment, shooting and killing the owner in the process. Defendant gave a videotaped confession to the police during which he admitted shooting the victim.

A Mercer County grand jury indicted defendant for first-degree murder for the purpose of escaping detection or while committing a robbery, N.J.S.A. 2C:11-3(a)(1) or -(a)(2) (count one); first-degree murder, N.J.S.A. 2C:11-3(a)(1) and -(a)(2) (count two); first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) (count three); first degree robbery, N.J.S.A. 2C:15-1 (count four); second-degree possession of a weapon for an unlawful purpose, 2C:39-4(a) (count five); third-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count six); and hindering apprehension or prosecution, N.J.S.A. 2C:29-3(b)(4) (count seven).

On June 5, 2012, defendant entered into a plea agreement, pleading guilty to felony murder (count three), in exchange for a sentencing recommendation of a thirty-year prison term subject to a thirty-year period of parole ineligibility pursuant to N.J.S.A. 2C:11-3(b)(1), followed by a five-year period of parole supervision under the No Early Release Act (NERA), N.J.S.A. 2C:43-7-2(c), and the dismissal of the remaining counts.

The plea forms initialed and signed by defendant included the standard supplemental plea form for NERA cases, which asked

defendant: "Do you understand that because you have pled guilty to these charges the court must impose a 5 year term of parole supervision and that term will begin as soon as you complete the sentence of incarceration?" To that question defendant answered, "Yes."

During the plea hearing, the court questioned defendant about the supplemental NERA plea form. Defendant testified that he reviewed the form with his attorney, understood the questions as his attorney explained them to him, underlined his answers on the form, and signed the form. He further testified that he understood there would be a five-year period of parole supervision after he was released from incarceration.

Defendant established an adequate factual basis for his plea. He admitted that on the morning of September 17, 2010, he was armed with a loaded .38 caliber handgun and entered James' Dry Cleaning intending to rob it. In the process of carrying out the robbery, he admitted to firing a shot that caused the death of the owner, constituting felony murder.

Defendant denied being under the influence of any substance, either legal or illegal, that would interfere with his ability to make a decision the day of the plea hearing. He also denied having any questions that he would like to ask the court, the prosecutor, or his attorney about the terms of the agreement or the proceeding

being conducted. Defendant testified that he was entering into the plea agreement freely, voluntarily, and with full knowledge and understanding of the consequences of being convicted of felony murder.

The trial court accepted the defendant's plea, finding that defendant was "competent" and that the plea was being made "freely, knowingly, intelligently, and voluntarily, and that there's a sufficient factual basis for acceptance of the plea." Defendant did not move to withdraw his guilty plea either before or after sentencing.

On August 15, 2012, defendant was sentenced in accordance with the terms of the plea agreement and ordered to pay restitution of \$3426 and appropriate fines, penalties, and assessments. The remaining counts of the indictment were dismissed.

On June 10, 2013, defendant filed a notice of appeal, arguing that the restitution award was excessive. The appeal was heard before an Excessive Sentencing Oral Argument (ESOA) panel pursuant to Rule 2:9-11. Defendant conceded at oral argument that he had received the minimum sentence for felony murder—a thirty-year prison term subject to a thirty-year period of parole ineligibility. Defendant's sole argument was based on the sentencing court's failure to conduct a hearing regarding his ability to pay \$3426 in restitution. The ESOA panel entered a

November 20, 2013 order affirming the sentence imposed, holding that "the disposition is not manifestly excessive or unduly punitive and does not constitute an abuse of discretion."

On July 28, 2014, defendant filed a timely pro se PCR petition that was supplemented with a brief by appointed PCR counsel. Through counsel, defendant raised the following issues:

POINT I

DEFENDANT WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, DUE PROCESS OF THE LAW AND HIS RIGHT TO A FAIR TRIAL AND RECEIVED AN ILLEGAL SENTENCE SINCE TRIAL COUNSEL AND THE COURT DEPRIVED THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS.

POINT II

DEFENDANT WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHTS TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, DUE PROCESS OF THE LAW AND OF HIS RIGHT TO A FAIR TRIAL SINCE TRIAL COUNSEL FAILED TO ARGUE THAT THE DEFENDANT COULD NOT ENTER INTO THE PLEA AGREEMENT KNOWINGLY.

In a supplemental letter brief, PCR counsel raised the following additional issue:

A term of incarceration of thirty years with a thirty year parole disqualifier was imposed for the conviction for count three, Felony Murder. Such sentence violates the Fifth Amendment and Double Jeopardy Clause of the United States Constitution as the same was not imposed pursuant to the No Early Release Act. Moreover, a sentence imposed pursuant to the Graves Act was illegal as the defendant was sentenced pursuant to the No Early Release

Act. Notably, N.J.S.A. 2C:1-9(a) prevents a greater sentence when a lesser one is imposed.

In his supporting brief, PCR counsel argued that trial counsel failed to inform defendant he would be subject to a five-year term of parole supervision upon his release, failed to inform him the plea he entered into violated his rights and the Double Jeopardy Clause of the United States Constitution, and failed to inform him he could file a direct appeal addressing those issues as well as his inability to pay restitution. He further argued that trial counsel failed to make relevant arguments at sentencing regarding mitigating factors and the double counting of aggravating factors. PCR counsel also asserted trial counsel failed to argue for a lesser sentence pursuant to State v. Warren, 115 N.J. 433 (1989).

More specifically, PCR counsel's brief argued that trial counsel failed to discuss defendant's mental health history, social history, disadvantaged childhood, and addiction problems during the sentencing hearing. He further noted that trial counsel failed to argue that defendant was a first time youthful offender and had received his G.E.D.

With respect to his argument that he had not entered his guilty plea knowingly, defendant argued:

[D]ue to him being unable to take his medications prior to entering into the plea agreement, he was unable to function correctly and rationally participate in the plea

hearing. He was unable to object in any substantial way, comprehend his position, and consult with counsel intelligently. Trial counsel was aware that he was unable to function and instructed him to perjure himself by denying as much.

Defendant's claim that he was unable to take his prescribed medications on the date of the plea hearing was not corroborated in any way. Defendant did not provide any affidavits, certifications, expert reports, medical records, or other exhibits verifying any relevant psychiatric or medical diagnosis, or any medications he had been prescribed. Defendant also failed to provide any documents verifying the impact of the failure to take those medications on his ability to make a knowing, intelligent, and voluntary plea. Defendant's presentation during the PCR hearing was similarly devoid of any such information.

The PCR was heard by Judge Pedro J. Jimenez, Jr. During the PCR hearing, defendant withdrew his claims of ineffective assistance of counsel, and stated that he only sought to pursue his claim that his sentence was illegal. In essence, defendant's argument was twofold: (1) trial counsel failed to advise him that he would be subject to a five-year period of parole supervision if convicted of felony murder; and (2) imposition of the five-year period of parole supervision violated his constitutional rights and was illegal.

On July 21, 2015, Judge Jimenez issued an order and comprehensive seventeen-page letter opinion denying defendant's PCR petition without conducting an evidentiary hearing. In his opinion, Judge Jimenez addressed the merits of each of defendant's arguments, including those he had voluntarily withdrawn.

In his present appeal, defendant raises the following issue:

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 THIS CONTENTION THAT HE FAILED TO RECEIVE ADEQUATE LEGAL REPRESENTATION FROM TRIAL COUNSEL.

We affirm substantially for the reasons stated by Judge Jimenez in his thorough and well-reasoned written decision. We add only the following comments.

PCR petitioners are not automatically entitled to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999). Rather:

A defendant shall be entitled to an evidentiary hearing only upon the establishment of a prima facie case in support of post-conviction relief, a determination by the court that there are material issues of disputed fact that cannot be resolved by reference to the existing record, and a determination that an evidentiary hearing is necessary to resolve the claims for relief.

[R. 3:22-10(b).]

"A court shall not grant an evidentiary hearing . . . if the defendant's allegations are too vague, conclusionary or speculative[.]" R. 3:22-10(e)(2); see State v. Marshall, 148 N.J. 89, 158, cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997). "Rather, defendant must allege specific facts and evidence supporting his allegations." State v. Porter, 216 N.J. 343, 355 (2013). As we explained in Cummings, "in order to establish a prima facie claim, a petitioner must do more than make bald assertions. . . ." Cummings, supra, 321 N.J. Super. at 170. He must allege facts sufficient to demonstrate his claims. Ibid.

As noted by Judge Jimenez, defendant did not

provide any actual evidence of the fact that he was prescribed medication at the time of the plea, what type of medication he was prescribed, what effect the medication had on petitioner or that he was instructed by his attorney to perjure himself and say that he understood the proceedings without his medication. As noted by the State, if the [defendant] was prescribed legally to medication to aid in his comprehension while incarcerated at the Mercer County Correctional Center, there would be records documenting that he was prescribed medication. The [defendant] has provided no such records.

Defendant has not provided any evidence of his diagnosis, the medication he was prescribed, or that his condition would affect his cognitive ability if he did not receive his prescribed medication. His unsupported allegations failed to establish a


prima facie case. Absent such evidence, defendant cannot prevail on the merits.

We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. State v. Preciose, 129 N.J. 451, 462 (1992). We discern no such abuse of discretion by the PCR court. Judge Jimenez correctly concluded that defendant did not establish a prima facie case and was not entitled to an evidentiary hearing.

The remaining issues raised by defendant lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION