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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-0779-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KESHAWN COLEMAN, a/k/a DOO-WOP,

Defendant-Appellant.

Submitted April 24, 2017 – Decided May 3, 2017

Before Judges Sabatino and Currier.

On appeal from Superior Court of New Jersey,
Law Division, Passaic County, Indictment No.
07-10-1307.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kisha M. Hebbon, Designated
Counsel, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Jenny M. Hsu, Deputy
Attorney General, of counsel and on the
briefs).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Keshawn Coleman, who was convicted of murder and
other offenses after a 2010 jury trial, appeals the trial court's

denial of his post-conviction relief ("PCR") petition after an evidentiary hearing. We affirm.

We incorporate by reference the underlying facts detailed at length in this court's unpublished opinion on direct appeal. State v. Coleman, No. A-1752-10 (App. Div. Oct. 3, 2012). The State's proofs showed that defendant shot and killed the victim, James Felton, at approximately 1:30 a.m. on May 19, 2007. The shooting occurred outside of a chicken store in Paterson, after calls had been placed to the victim to draw him to that location. Id. at 2-4. An eyewitness, Sharonda Chapman, the victim's cousin, saw defendant shooting in the direction of the store. Id. at 4. By her description, the shooter was wearing a distinctive hoodie with a "skeleton bones" insignia. Ibid. She saw the shooter's hood fall off as he was backing up. Ibid. Chapman also saw the victim fall after the shots were fired and defendant ran away. Ibid.

The State presented at trial video surveillance reflecting that a person generally matching defendant's description was seen inside and outside the chicken store at the time, although the gunshots were not filmed and the quality of the videos was somewhat grainy. Id. at 9-15. The State also admitted into evidence an incriminating statement defendant made to an informant in jail, admitting that he had shot a person multiple times in

the stomach. Id. at 6.

Defendant did not testify at trial, nor did he present any witnesses. Id. at 7. He received an aggregate fifty-year custodial sentence, subject to parole ineligibility conditions under the No Early Release Act, N.J.S.A. 2C:43-7.2.

On direct appeal, defendant argued that the trial court erred in admitting the surveillance videos, that the court should have relieved a certain deliberating juror, that the jury charge on a weapons count was flawed, and that his sentence was excessive. Id. at 8. We rejected each of those arguments and affirmed defendant's conviction and sentence. Id. at 9-32. The Supreme Court denied defendant's petition for certification. 213 N.J. 389 (2013).

In his PCR petition, defendant contended that his trial attorney was ineffective in failing to investigate and call three alleged alibi witnesses: David Goodell, Taheem Jones, and Aaron Wade. Each of them signed a certification or affidavit in 2014 to accompany the PCR petition, contending that he or she had been at the location and that defendant did not shoot the victim.

The judge hearing the PCR matter, who had also been the trial judge, conducted a two-day evidentiary hearing. The hearing included testimony from defendant himself, who alleged that he told his trial attorney on at least three occasions about the

alibi witnesses. Defendant also claimed that his trial attorney failed to investigate the alibis and, when the trial occurred, the attorney told him it was too late to do anything about it. The PCR judge heard testimony from the three proposed alibi witnesses as well.

Defendant's trial attorney, a veteran criminal defense lawyer of over forty years who had handled about 150 homicides, testified at the hearing. He had no recollection of defendant ever telling him about alibi witnesses. In addition, the attorney stated that, as a matter of his general practice, he would not have presented alibi witnesses unless they were very convincing, because a weak alibi witness will tend to poison the jury against a defendant.

After considering the testimony, the PCR judge issued an oral opinion dismissing the petition. The judge did not find credible the accounts presented by the alibi witnesses, especially since they did not come forward until four years after the trial, by which point defendant had already been convicted and lost his direct appeal. By contrast, the judge found the defendant's criminal trial attorney to be credible.

In his present appeal, defendant raises through counsel the following points for consideration:

POINT I

THE POST CONVICTION RELIEF COURT ERRED IN DENYING THE DEFENDANT'S PETITION FOR POST CONVICTION RELIEF BASED UPON TRIAL COUNSEL'S FAILURE TO PROVIDE ADEQUATE LEGAL REPRESENTATION TO DEFENDANT REGARDING WHETHER TO INTERVIEW AND CALL SEVERAL ALIBI WITNESSES TO TESTIFY AT TRIAL, SINCE ITS FACTUAL FINDINGS WERE NOT SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE ARISING OUT OF THE EVIDENTIARY HEARING AND, THEREFORE, ARE NOT ENTITLED TO DEFERENCE ON APPEAL.

In addition, defendant raises the following additional points in a pro se supplemental brief:

SUPPLEMENTAL POINT I

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED BECAUSE DEFENDANT ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT TRIAL COUNSEL'S DECISION NOT TO INVESTIGATE, INTERVIEW AND CALL DEFENDANTS WITNESSES WAS INEFFECTIVE ASSISTANCE OF COUNSEL.

The applicable legal principles that guide our review of this PCR appeal involving claims of trial counsel's ineffectiveness are well-established.

Under the Sixth Amendment of the United States Constitution, a criminal defendant is guaranteed the effective assistance of legal counsel in his defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). To establish a deprivation of that right, a convicted defendant must satisfy the two-part test enunciated in Strickland by

demonstrating that: (1) counsel's performance was deficient, and (2) the deficient performance actually prejudiced the accused's defense. Id. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693; see also State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey).

In reviewing such claims, courts apply a strong presumption that defense counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, supra, 466 U.S. at 690, 104 S. Ct. at 2066, 80 L. Ed. 2d at 695. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy[.]" Fritz, supra, 105 N.J. at 42, 54 (1987) (quoting State v. Williams, 39 N.J. 471, 489 (1963), cert. denied, 382 U.S. 964, 86 S. Ct. 449, 15 L. Ed. 2d 366 (1965), overruled on other grounds by, State v. Czachor, 82 N.J. 392 (1980)). Where, as here, a convicted defendant claims that his trial attorney was deficient in failing to call one or more witnesses in his defense, our courts review the attorney's decision on such strategic matters through a "highly deferential" prism. See State v. Arthur, 184 N.J. 307, 320-21 (2005).

Applying these standards, we affirm the trial court's conclusion that defendant has failed to meet his heavy burden in demonstrating trial counsel's ineffectiveness in not presenting

the alleged alibi witnesses. The State provides formidable reasons why each of the three witnesses was not likely to be believed by a jury. Without exhaustively detailing those reasons here, we note, as the trial court recognized, that the prolonged silence of each of those individuals undermines their veracity. See State v. Silva, 131 N.J. 438, 447-48 (1993). Beyond that general impeaching factor, we further note that Jones had a close relationship with defendant, likening him to a "brother," which would be indicative of bias. United States v. Abel, 469 U.S. 45, 52, 105 S. Ct. 465, 469, 83 L. Ed. 2d 450, 457 (1984). Wade likewise was a "close friend" of defendant. Moreover, the credibility of Goodell could have been weakened by admission of his prior conviction for murder. See N.J.R.E. 609.

Additionally, the accounts of the proposed alibi witnesses were inconsistent with each other, in terms of their description of what defendant was wearing, and also contradicted one another about who was with defendant at the location at the time. The witnesses also differed in their descriptions of the murder, specifically including whether the shots were fired all outside the store, or with some or all inside the store.

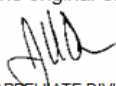
With respect to the alleged communications between defendant and his trial counsel during the pretrial phase, we defer to the trial court's finding that the PCR hearing testimony of trial

counsel, to the extent he recalled this matter and also appropriately stated his regular customs and practices, see N.J.R.E. 406, was more credible than defendant's PCR hearing testimony. State v. Locurto, 157 N.J. 463, 471 (1999) (noting our deferential scope of review of a trial judge's factual findings). There is no documentation that defendant ever wrote a letter or sent a note to his trial attorney asking him to investigate these alleged alibi witnesses.

Moreover, as our original opinion on direct appeal reflects, Coleman, supra, slip op. at 2-7, there were multiple proofs to establish that defendant was the shooter, including him being observed wearing the hooded sweatshirt with a skeleton depicted on it, and his jailhouse confession. Defendant's further arguments lack sufficient merit to be worthy of comment. 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