

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

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-1647-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GARY C. JACQUES,

Defendant-Appellant.

---

Submitted September 26, 2017 — Decided October 18, 2017

Before Judges Reisner and Mayer.

On appeal from the Superior Court of New  
Jersey, Law Division, Mercer County,  
Accusation No. 05-04-0307.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Karen A. Lodeserto, Designated  
Counsel, on the brief).

Angelo J. Onofri, Mercer County Prosecutor,  
attorney for respondent (Randolph E. Mershon,  
III, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Gary C. Jacques appeals from a June 26, 2015 order  
denying his petition for post-conviction relief (PCR). We affirm.

The trial evidence is detailed in the PCR judge's opinion and in our opinion affirming defendant's conviction for robbery and burglary on direct appeal. State v. Jacques, No. A-0662-06 (App. Div. July 9, 2010), remanded, 212 N.J. 490 (2011).<sup>1</sup> We summarize the most pertinent facts. While committing a burglary, armed with a knife, defendant was confronted by the homeowner, who chased him outside, struggled with him, and pulled off defendant's sweatshirt. Defendant ran away, with the victim in pursuit, but was quickly apprehended by the police.

The victim told the police that the perpetrator was wearing an olive green t-shirt under the sweatshirt.<sup>2</sup> When the police searched defendant's home, they found a t-shirt matching that description. After returning home, the victim found a jacket in his kitchen and some jewelry; neither the jewelry nor the jacket belonged to the victim. At trial, the State relied heavily on eyewitness identifications made shortly after the crime occurred. The State also relied on evidence that defendant tried to bribe a

---

<sup>1</sup> The Supreme Court remanded the matter to the trial court to correct the judgment of conviction and to reconsider the period of parole supervision imposed. Ibid.

<sup>2</sup> A woman witness, who saw defendant struggling with the victim, also testified that defendant was wearing a green t-shirt. She testified that after defendant ran away with the victim chasing him, she found a jacket with jewelry in the pocket near the scene. She folded the jacket and brought it to the home of the victim, who was her neighbor.

witness. The State did not have any of the garments tested for DNA, and defense counsel used the absence of DNA evidence to attack the State's case.

In support of defendant's PCR petition, his PCR counsel obtained a court order to have the various clothing tested for DNA. Defendant's DNA was not found on the inside cuffs of the sweatshirt or the jacket, although the DNA of several other unknown persons, including a woman, were found on the garments. However, he was a likely contributor to the DNA on the inside collar of the olive green t-shirt. In his opinion, the PCR judge reasoned that the DNA evidence, even if presented to the jury, would not have changed the outcome of the trial. The judge also inferred that trial counsel did not have the garments tested for DNA as a matter of strategy, so that he could attack the State's case without taking the risk that testing would reveal defendant's DNA on the garments.

On this appeal, defendant raises the following point of argument:

POINT ONE: DEFENDANT IS ENTITLED TO AN EVIDENTIARY HEARING BECAUSE TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO CONDUCT DNA TESTING ON THE RECOVERED CLOTHING PRIOR TO TRIAL.

Having reviewed the record in light of the applicable legal standards, we affirm substantially for the reasons stated by the PCR judge. We add these comments.


The trial record supports a conclusion that trial counsel refrained from having the garments tested as a matter of trial strategy. Moreover, the strategy was a wise one, because DNA testing would have been a two-edged sword. Even if defendant's DNA was not found on the sweatshirt, or on the jacket, there was evidence of his DNA on the t-shirt, which was the garment the burglar wore closest to his body. Further, because a woman witness handled the jacket, the fact that a woman's DNA was on the garment would not have affected the outcome of the trial. Finally, the DNA found on the jacket and sweatshirt was never matched to anyone else, much less anyone who might have committed the burglary.

In order to present a prima facie case of ineffective assistance of counsel, defendant needed to produce legally competent evidence that his attorney was ineffective and that counsel's substandard representation prejudiced the defense. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed. 2d 674, 693 (1984); State v. Fritz, 105 N.J. 42, 58 (1987). Because defendant did not present a prima facie case on either prong of the Strickland test, he was not entitled to an

evidentiary hearing. See State v. Preciose, 129 N.J. 451, 463-64  
(1992).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION