

**NOT FOR PUBLICATION WITHOUT THE  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-2575-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANGEL JIMENEZ,

Defendant-Appellant.

---

Submitted October 30, 2017 – Decided December 18, 2017

Before Judges Ostrer and Whipple.

On appeal from Superior Court of New Jersey,  
Law Division, Middlesex County, Indictment  
Nos. 05-06-0821 and 07-08-1187.

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

Andrew C. Carey, Middlesex County Prosecutor,  
attorney for respondent (David M. Liston,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant Angel Jimenez appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

On December 18, 2009, following a jury trial, defendant was convicted of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); third-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a); second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); third-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b); third-degree hindering apprehension or prosecution, N.J.S.A. 2C:29-3(b)(1); third-degree hindering apprehension or prosecution, N.J.S.A. 2C:29-3(b)(4); fourth-degree possession of marijuana with intent to distribute, N.J.S.A. 2C:35-5(a)(1); and third-degree witness tampering, N.J.S.A. 2C:28-5(a)(1). The jury also found defendant guilty of second-degree certain persons offense, N.J.S.A. 2C:39-7(b), and acquitted him of felony murder, N.J.S.A. 2C:11-3(a)(3). Defendant was sentenced to a term of life in prison, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, with a condition requiring five-year parole supervision for the murder conviction, and lesser concurrent terms for the other convictions.

On direct appeal, we affirmed defendant's convictions and sentences but remanded for a correction of his judgment of conviction because it reflected the incorrect degree of unlawful

taking. The underlying facts supporting his convictions are outlined in our opinion on direct appeal and need not be repeated here. State v. Jimenez, No. A-4280-09 (App. Div. Mar. 10, 2014), certif. denied, 219 N.J. 628 (2014).

In this appeal, defendant raises the following issues:

POINT I: DEFENDANT HAS SUBMITTED PRIMA FACIE EVIDENCE REQUIRING HE BE GRANTED AN EVIDENTIARY HEARING ON POST CONVICTION RELIEF.

POINT II: DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ENTITLING HIM TO POST CONVICTION RELIEF.

(a) Counsel was ineffective for failing to sufficiently communicate with defendant and prepare a minimally adequate defense for trial.

(b) Counsel was ineffective for failing to object to numerous instances of prosecutorial misconduct resulting in an unfair trial.

Under the Sixth Amendment of the United States Constitution, a person accused of crimes is guaranteed the effective assistance of legal counsel in his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish a deprivation of that right, a convicted defendant must satisfy the two-part test enunciated in Strickland by demonstrating: (1) counsel's performance was deficient, and (2) the deficient performance actually prejudiced the accused's defense. Id. at 687; State v. Fritz, 105 N.J. 42, 52 (1987).

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, 466 U.S. at 690. "[C]omplaints merely of matters of trial strategy will not serve to ground a constitutional claim of inadequacy[.]" Fritz, 105 N.J. at 54 (citation omitted); see also State v. Echols, 199 N.J. 344, 357-59 (2009). "The quality of counsel's performance cannot be fairly assessed by focusing on a handful of issues while ignoring the totality of counsel's performance in the context of the State's evidence of defendant's guilt." State v. Castagna, 187 N.J. 293, 314 (2006) (citing State v. Marshall, 123 N.J. 1, 165 (1991), cert. denied, 507 U.S. 929 (1993)). "As a general rule, strategic miscalculations or trial mistakes are insufficient to warrant reversal 'except in those rare instances where they are of such magnitude as to thwart the fundamental guarantee of [a] fair trial.'" Id. at 314-15 (quoting State v. Buonadonna, 122 N.J. 22, 42 (1991)).

The trial court has the discretion to conduct an evidentiary hearing. State v. Preciose, 129 N.J. 451, 462 (1992); R. 3:22-10. In order to obtain an evidentiary hearing on a PCR application based upon an ineffective assistance claim, defendant must make a prima facie showing of deficient performance and actual prejudice.

Id. at 462-63. "When determining the propriety of conducting an evidentiary hearing, the PCR court should view the facts in the light most favorable to the defendant." State v. Jones, 219 N.J. 298, 311 (2014) (citation omitted); see also Preciose, 129 N.J. at 462-63.

However, "bald assertions" of deficient performance are simply insufficient. State v. Porter, 216 N.J. 343, 355 (2013) (citing State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999)). Rather, defendant must demonstrate a reasonable likelihood of success on the merits. R. 3:22-10(b).

Defendant argues an evidentiary hearing was required to discern whether his trial counsel adequately prepared a trial strategy. Defendant asserts his trial counsel only met with him two times in an eleven-month period, failed to call an expert witness, and did not confer with him so that he could participate in trial strategy.

Defendant has not presented prima face evidence of an ineffective assistance of counsel claim warranting an evidentiary hearing. As noted by the PCR court, defendant's trial counsel developed a trial strategy of self-defense. Trial counsel secured two witnesses and had defendant testify in support of this strategy. He also attempted to move medical records into evidence

to support this theory. While defendant contends an expert would have altered the outcome of the trial, he fails to sufficiently explain how this would occur. Moreover, defendant has not identified any other favorable witnesses or evidence that would have been adduced through additional meetings with his attorney. Accordingly, these bald assertions fail to persuade us that an evidentiary hearing was warranted.

Lastly, defendant avers he was denied effective assistance of counsel because his trial counsel failed to object to multiple instances of prosecutorial misconduct in opening and closing statements. Defendant has previously raised substantially similar issues on direct appeal, State v. Jimenez, No. A-4280-09 (App. Div. Mar. 10, 2014) (slip op. at 22-30), and we ultimately found defendant was not prejudiced. Correspondingly, we need not delve into the merits of these arguments again. R. 3:22-5; State v. McQuaid, 147 N.J. 464, 483 (1997) ("[A] defendant may not use a petition for post-conviction relief as an opportunity to relitigate a claim already decided on the merits.").

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION