

**NOT FOR PUBLICATION WITHOUT THE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-2942-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN L. HARRIS, a/k/a JOHN
STEVENSON and LEROY J. HARRIS,

Defendant-Appellant.

Submitted October 19, 2016 – Decided March 9, 2017

Before Judges Fuentes and Simonelli.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Indictment
No. 11-07-0882.

Joseph E. Krakora, Public Defender, attorney
for appellant (Michele C. Buckley, Designated
Counsel, on the brief).

Robert D. Bernardi, Burlington County
Prosecutor, attorney for respondent (Alexis R.
Agre, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

Defendant John L. Harris appeals from the order of the trial court denying his post-conviction relief (PCR) petition. We affirm. The following facts inform our analysis.

On July 21, 2011, a Burlington County grand jury returned Indictment No. 11-07-0882-I charging defendant with second degree burglary, N.J.S.A. 2C:18-2a(1); third degree aggravated assault on a law enforcement officer, N.J.S.A. 2C:12-1b(5)(a); third degree aggravated assault, N.J.S.A. 2C:12-1b(2); first degree robbery, N.J.S.A. 2C:15-1a(2); third degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4d; fourth degree possession of a prohibited device or weapon, N.J.S.A. 2C:39-3e; third degree resisting arrest, N.J.S.A. 2C:29-2a(3)(a) and N.J.S.A. 2C:29-2a(2); and fourth degree obstruction of the administration of law, N.J.S.A. 2C:29-1a.

On June 5, 2012, the day the case was scheduled for trial before a jury, defendant entered an "open plea" of guilty to second degree burglary. Before accepting the plea, the trial judge addressed defendant directly to explain the ramifications of his decision.

THE COURT: You understand you're pleading open[,] which means it is really up to the [c]ourt, although I've given an indication of what I will do, to a second degree burglary within this indictment of 11-07-882. You're extended term eligible[,] so the ordinary maximum term on a second degree [offense] is

10 years[,] but because of your extended term eligibility[,] it can go up to 20 [years], 10 [years] without parole. However, you're entering into an open plea. It's a non-negotiated plea. There was discussion with the [c]ourt. I indicated that I would go with five, do 85. You are subject also under the No Early Release Act to three years of parole supervision upon your release from incarceration. Do you understand all of those terms?

DEFENDANT: Yes, ma'am.

THE COURT: And if for some reason the [c]ourt received the presentence report and felt I would not be able to do what I've said I'm going to do[,] we would go back to square one, all right? So you understand that as well?

DEFENDANT: Yes.

THE COURT: All right. Now in any event, is that the entire agreement as you understand it to be? You know it's open plea. The State may very well ask for that extended term and I would evaluate the case at that point in time. Do you understand that?

DEFENDANT: Yes.

THE COURT: Okay. So knowing all that, is this the deal that you want to take?

DEFENDANT: Yes, ma'am.

The trial court continued to question defendant directly to ensure he understood that he was waiving his right to challenge the State's case at trial and that he had enough time to discuss the case with his attorney. Thereafter, defense counsel questioned defendant to establish a factual basis for his plea to second

degree burglary. The trial court found defendant provided a sufficient factual basis to support his guilty plea.

After denying defendant's application for admission into Drug Court, the trial court sentenced defendant on October 19, 2012.¹ The court denied the State's application for an extended term and sentenced defendant to a term of five years, with an eighty-five percent period of parole ineligibility and three years of parole supervision, as required under the No Early Release Act, N.J.S.A. 2C:43-7.2.

On defendant's appeal, this court affirmed the sentence imposed by the trial court through the summary process available under Rule 2:9-11. State v. John L. Harris, No. A-2711-12 (App. Div. June 27, 2013). On August 19, 2013, defendant filed a pro se PCR petition alleging ineffective assistance of counsel. The court assigned counsel to represent defendant in the prosecution of the petition. PCR counsel filed a supplemental brief arguing trial counsel was ineffective "when she failed to fully explain the plea allocution" to defendant and by not seeking to suppress a self-incriminating statement defendant gave to law enforcement agents.

¹ The court denied defendant's application to postpone sentence to allow him to file an interlocutory appeal challenging the rejection to Drug Court.

The matter came for oral argument before Judge Jeanne T. Covert, the same judge who presided over the plea and sentencing hearings. PCR counsel argued defendant did not understand the nature of the offense he pled guilty to and "thought he was pleading guilty to, at best, a third degree offense of burglary, not the second degree which would require the 85 percent parole ineligibility." PCR counsel argued that defendant's trial attorney should have filed a motion to suppress defendant's self-incriminating statement to law enforcement because defendant was "confused" and not capable of effectively waiving his rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

According to PCR counsel, law enforcement agents interrogated defendant immediately after his arrest, while defendant was still "confused" from the injuries he sustained when he was "tackled to the ground" by the arresting officers. Finally, PCR counsel challenged the legal adequacy of defendant's factual basis for second degree burglary, which required the court to find defendant committed a burglary while armed with a "deadly weapon." N.J.S.A. 2C:18-2b(2).

After considering the arguments of counsel, Judge Covert found defendant had not established a prima facie case of ineffective assistance of counsel and denied the petition without

conducting an evidentiary hearing. Judge Covert explained the basis of her ruling in a memorandum of opinion dated August 29, 2014.

Defendant now appeals raising the following arguments.

POINT I

THE PCR COURT IMPROPERLY DENIED MR. HARRIS'S PETITION FOR POST-CONVICTION RELIEF WITHOUT CONDUCTING AN EVIDENTIARY HEARING, WHERE MR. HARRIS HAD ESTABLISHED A REASONABLE LIKELIHOOD [SIC] THAT HIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL WOULD SUCCEED ON THE MERITS.

A. Counsel failed to adequately explain to Mr. Harris that he was pleading guilty to a second degree offense and that he was admitting that he possessed a weapon during the offense.

B. Counsel failed to file a motion to suppress Mr. Harris's statement to the police.

C. Mr. Harris's plea was invalid as his plea allocution was insufficient for a finding of guilt for second degree burglary.


D. Mr. Harris should be permitted to withdraw his plea where it was not voluntarily and knowingly made.

As our Supreme Court has recently reaffirmed, "[t]o prevail on a claim of ineffective assistance of counsel, a defendant must . . . show both (1) that counsel's performance was deficient, and (2) that the deficient performance prejudiced the outcome." State

v. Pierre-Louis, 216 N.J. 577, 579 (2014) (citing 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)). After reviewing the record developed before the PCR court, we reject defendant's arguments and affirm substantially for the reasons expressed by Judge Covert in her August 29, 2014 memorandum of opinion. Because defendant did not make out a prima facie case of ineffective assistance of counsel, Judge Covert correctly denied defendant's request for an evidentiary hearing.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION