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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-3399-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HIRAM VALENCIA,

Defendant-Appellant.

Submitted February 7, 2017 – Decided February 24, 2017

Before Judges Fasciale and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
M-2009-537.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alan I. Smith, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Paul H.
Heinzel, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant appeals from a January 2, 2015 order denying his
petition for post-conviction relief (PCR). Defendant argues he
received ineffective assistance of plea counsel. Judge John R.

Tassini entered the order without conducting an evidentiary hearing and rendered a thorough written decision. We affirm substantially for the reasons given by the judge.

In May 2009, defendant pled guilty to a disorderly persons simple assault, N.J.S.A. 2C:12-1(a)(2). At the plea hearing, defendant testified that he had an argument with his girlfriend, used a knife to pry open a locked door, and negligently cut the finger of someone who was on the other side of the door. The judge followed the plea agreement and sentenced defendant to time served in jail. At that time, there had been a pending immigration detainer.

In January 2013, defendant filed his PCR petition contending that plea counsel pressured him into pleading guilty. In support of his petition, defendant stated that he might be deported. He contended that his guilty plea potentially jeopardized his ability to participate in a deferred action for childhood arrivals (DACA) 2012 program. Defendant represented to the PCR court that his guilty plea could essentially affect his ability to defer his immigration status under the DACA program by obtaining a work authorization. Defendant also submitted purported certifications in which he belatedly declared his innocence for the first time since the 2009 guilty plea.

The PCR judge denied the petition, entered the order under review, and rendered a lengthy written decision. The judge concluded that defendant failed to make a prima facie showing of ineffectiveness of plea counsel. The judge found that defendant gave an adequate factual basis for the guilty plea and that his plea counsel could not have reasonably foreseen the creation of the DACA program approximately three years after the 2009 guilty plea.

On appeal, defendant argues the following points:

POINT I

THE ORDER DENYING [PCR] SHOULD BE REVERSED BECAUSE, REGARDLESS OF WHETHER TRIAL COUNSEL WAS INEFFECTIVE UNDER THE STRICKLAND¹ TEST, DEFENDANT'S FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO BE CORRECTLY INFORMED OF ALL RELEVANT CONSEQUENCES OF HIS GUILTY PLEA DIRECTLY BY THE TRIAL COURT, WAS VIOLATED[.]

POINT II

THE ORDER DENYING [PCR] SHOULD BE REVERSED AND THE MATTER REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT MADE A PRIMA FACIE SHOWING OF INEFFECTIVE ASSISTANCE OF COUNSEL[.]

POINT III

THE PCR COURT'S RULINGS VIOLATED DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION[.]

¹ Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

We have considered defendant's contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Tassini in his written opinion. We add the following comments.

We reject defendant's contention that he was entitled to an evidentiary hearing. A defendant is entitled to an evidentiary hearing only when he or she "has presented a prima facie [case] in support of [PCR,]" meaning that "the defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89, 158 (first alteration in original) (quoting State v. Preciose, 129 N.J. 451, 462 (1992)), cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997). Defendant fails to demonstrate a reasonable likelihood of success on the merits, and thus he is not entitled to an evidentiary hearing.

For defendant to obtain relief based on ineffective assistance grounds, he is obliged to show not only the particular manner in which counsel's performance was deficient, but also that the deficiency prejudiced his right to a fair trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); accord State v. Fritz, 105 N.J. 42, 58 (1987).

Both the United States Supreme Court and the New Jersey Supreme Court have extended the Strickland test to challenges of guilty pleas based on ineffective assistance of counsel. Lafler v. Cooper, 566 U.S. 156, 163, 132 S. Ct. 1376, 1384-85, 182 L. Ed. 2d 398, 406-07 (2012); Missouri v. Frye, 566 U.S. 134, 140, 132 S. Ct. 1399, 1405, 182 L. Ed. 2d 379, 387 (2012); State v. DiFrisco, 137 N.J. 434, 456-57 (1994), cert. denied, 516 U.S. 1129, 116 S. Ct. 949, 133 L. Ed. 2d 873 (1996). Defendant must demonstrate with "reasonable probability" the result would have been different had he received proper advice from his trial attorney. Lafler, supra, 566 U.S. at 163, 132 S. Ct. at 1384, 182 L. Ed. 2d at 407 (quoting Strickland, supra, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698).


We are persuaded that the alleged deficiencies raised by defendant clearly fail to meet either of the performance or prejudice prongs of the Strickland test.

As to the first prong, defendant failed to sufficiently show how his counsel's performance was deficient or explain how he was allegedly forced into taking the plea. During the plea hearing, defendant admitted that he entered into the agreement voluntarily. He testified that no one forced or threatened him to plead guilty. The plea judge accepted defendant's guilty plea because defendant was guilty of the simple assault.

As to the second prong of Strickland, defendant produced no competent evidence to demonstrate with "reasonable probability" the result would have been different had he received proper advice from his plea attorney. Even if defendant had shown his plea counsel's assistance was deficient, which is not the case, defendant has not satisfied prong two of Strickland.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION