

**NOT FOR PUBLICATION WITHOUT THE  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-3647-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CANDIDO MAYAS,

Defendant-Appellant.

---

Submitted September 26, 2017 - Decided October 24, 2017

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Cumberland County, Indictment  
No. 07-02-0163.

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

Jennifer Webb-McRae, Cumberland County  
Prosecutor, attorney for respondent (Danielle  
R. Pennino, Assistant Prosecutor, of counsel  
and on the brief).

PER CURIAM

Defendant Candido Mayas appeals from a February 19, 2016 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

A jury found defendant guilty of unlawful possession of a handgun, N.J.S.A 2C:39-5b, and certain persons not to have weapons, N.J.S.A 2C:39-7b. Defendant was subsequently sentenced to an aggregate term of twenty years. Defendant appealed both the conviction and sentence. We rejected defendant's contentions and affirmed. See State v. Mayas, A-1710-11 (App. Div. Jan. 22, 2014). The Supreme Court denied defendant's petition for certification. See State v. Mayas, 218 N.J. 531 (2014).

Defendant filed a PCR petition alleging conflicts of interest that deprived him of his right to a fair trial. In addition, defendant claimed his appellate counsel's failure to raise the conflict of interest claim in defendant's direct appeal constituted ineffective assistance of counsel.

The PCR judge, who did not preside over defendant's criminal trial, heard oral argument on the PCR application without conducting an evidentiary hearing. The PCR judge denied defendant's petition.

We provide a brief background of events prior to defendant's criminal trial to give context to defendant's conflict of interest claims. Prior to trial, co-defendant Michael Perez accepted a

favorable plea deal in exchange for his testimony against defendant. Perez was represented by Yaron Helmer, Esq. Helmer had represented defendant eight years earlier in an unrelated aggravated assault case. Defendant asked the trial court to find that Helmer had a conflict of interest due to his prior representation of defendant. The trial judge denied defendant's conflict of interest motion.

Defendant also asserted collusion between Helmer and the assistant prosecutor, David Branco, who allegedly negotiated Perez's plea deal, although another prosecutor, Jon Reilly, handled Perez's plea hearing. Defendant contended that Branco and Helmer made an agreement when negotiating Perez's plea. According to defendant, Branco negotiated a favorable plea deal for Perez in exchange for future employment with Helmer's law firm several years later.

In his comprehensive written decision on defendant's PCR application, the PCR judge found that defendant had not presented evidence of an impermissible or disqualifying conflict nor a prima facie case of ineffective assistance of counsel. The PCR judge concluded that because the conflict of interest claim between defendant and Helmer was adjudicated by the trial judge, the claim was precluded by Rule 3:22-5. The PCR judge also found defendant failed to proffer any evidence of a conflict in Helmer's

representation of Perez based upon Helmer's representation of defendant in an unrelated criminal matter eight years earlier. Defendant failed to identify any information gleaned during Helmer's representation of defendant eight years earlier that could have impacted defendant's trial.

The PCR judge also rejected defendant's claim of collusion or improper conduct between Branco and Helmer as nothing more than an unsubstantiated conspiracy theory. The judge noted that eight months after defendant's conviction and three years after entry of Perez's plea agreement, Branco left the prosecutor's office. After leaving the prosecutor's office, Branco began working at Helmer's law firm. Based upon the significant length of time between Perez's plea negotiation and Branco's departure from the prosecutor's office, the PCR judge found there was no possible collusion between Helmer and Branco concerning future employment.

The PCR judge also found that defendant failed to establish a prima facie case of ineffective assistance of counsel in accordance with Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984), regarding appellate counsel's alleged deficient performance in failing to raise the conflict of interest claim on defendant's direct appeal.

On appeal from the denial of his PCR petition, defendant raises the following arguments:

POINT ONE

DEFENDANT'S CONVICTIONS MUST BE REVERSED BECAUSE APPELLATE COUNSEL FAILED TO PURSUE A CONFLICT OF INTEREST REGARDING CO-DEFENDANT'S ATTORNEY; IN THE ALTERNATIVE, THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF APPELLATE COUNSEL'S INEFFECTIVENESS.

POINT TWO

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE THAT THERE EXISTED A CONFLICT OF INTEREST BETWEEN THE ASSISTANT PROSECUTOR WHO NEGOTIATED CO-DEFENDANT'S PLEA AGREEMENT AND THE CO-DEFENDANT'S ATTORNEY.

Having considered these points in light of the record and the applicable law, we affirm denial of defendant's PCR petition substantially for the reasons set forth in the PCR judge's twenty-three page, well-reasoned, written decision.

To establish a prima facie claim of ineffective assistance of counsel, 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 test in New Jersey).

In reviewing ineffective assistance claims, courts apply a strong presumption that a defendant's trial 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 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963), cert. denied, 374 U.S. 855, 83 S. Ct. 1924, 10 L. Ed. 2d 1075 (1963), overruled on other grounds by State v. Czachor, 82 N.J. 392 (1980)). To establish a prima facie claim of ineffective assistance of counsel, a defendant must demonstrate a reasonable likelihood of succeeding under the Strickland/Fritz test. See State v. Preciose, 129 N.J. 451, 463 (1992). To demonstrate the likelihood of succeeding under the Strickland/Fritz test, a defendant "must do more than make bald assertions[,] . . . [and] must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999).

We agree with the PCR judge that defendant failed to establish the elements for an ineffective assistance claim as to his appellate counsel. Appellate counsel is not required to raise every possible issue and need only raise issues that have a

reasonable possibility of success. State v. Gaither, 396 N.J. Super. 508, 515-16 (App. Div. 2007), certif. denied, 194 N.J. 444 (2008). In this case, there was no evidence of collusion or a conflict of interest between Helmer and Branco. There is nothing in the record supporting defendant's theory that Branco planned to join Helmer's law firm three years in advance and therefore conspired to negotiate a favorable plea deal for Helmer's client in 2008. We agree with the PCR judge that defendant's "bald assertion . . . flies in the face of logic and common sense." We further agree with the PCR judge that defendant's ineffective assistance claim as to his appellate counsel is "a rabbit warren of irrelevant information predicated upon speculation, conjecture, and conspiracy paranoia of the first order. There [was] no mystery. The prosecution simply gave up too much for codefendant's testimony. It was a tactical error and in the end it benefitted [defendant]."<sup>1</sup> Appellate counsel cannot be ineffective for failing to raise a meritless claim. Defendant failed to demonstrate that appellate counsel's performance was deficient or prejudicial. As defendant failed to present a prima facie showing of

---


<sup>1</sup> Because Perez's plea deal was so favorable, it compromised Perez's credibility during defendant's trial and defendant was acquitted of the most serious charges.

ineffectiveness, no evidentiary hearing was required. Preciose,  
supra, 129 N.J. at 462-63.

We find no merit in defendant's other contentions raising  
issues that were either already decided on direct appeal or could  
have been raised on direct appeal. See R. 3:22-4 and R. 3:22-5.  
See also 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