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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-3680-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN M. DELORBE,

Defendant-Appellant.

Submitted June 8, 2017 – Decided June 23, 2017

Before Judges Lihotz and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
13-03-0690.

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

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Kerry J. Salkin,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Juan Delorbe appeals from an order denying his
petition for post-conviction relief (PCR) without an evidentiary
hearing. Pursuant to the Court's holding in State v. Parker,

212 N.J. 269 (2012), we remand this matter with the direction the PCR court permit the parties to engage in oral argument.

In 2013, defendant pled guilty to second-degree distribution of cocaine, N.J.S.A. 2C:35-5(a)(1) and (b)(2). He was sentenced to a five-year term of imprisonment. In 2015, defendant filed a PCR petition and brief, followed by counsel filing a supplemental brief. Defendant's principal arguments were plea counsel failed to advise him of the deportation consequences of pleading guilty, investigate the case, and utilize an interpreter to communicate with him. Defendant also argued counsel's ineffectiveness improperly induced him to plead guilty and, thus, he should be permitted to withdraw his plea.

On February 12, 2016, the PCR court denied defendant's petition. Although defendant requested oral argument, the court decided the matter on the papers. In its written opinion, the court did not explain why it denied defendant's request for oral argument.

On appeal, defendant raises the following points for our consideration:

POINT I — THIS MATTER MUST BE REMANDED FOR ORAL ARGUMENT.

POINT II — IN THE ALTERNATIVE, MR. DELORBE IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS ATTORNEY RENDERED INEFFECTIVE

ASSISTANCE OF COUNSEL AND THAT HE SHOULD BE ALLOWED TO WITHDRAW HIS PLEA.

Under the circumstances, we need only address the first argument. Defendant argues the PCR court erred when it rejected his petition without affording his attorney the right to present oral argument. We agree. In Parker, the Court held:

[W]hen the trial judge . . . reach[es] the determination that the arguments presented in the papers do not warrant oral argument, the judge should provide a statement of reasons that is tailored to the particular application, stating why the judge considers oral argument unnecessary. A general reference to the issues not being particularly complex is not helpful to a reviewing court when a defendant later appeals on the basis that the denial of oral argument was an abuse of the trial judge's discretion.

[Parker, supra, 212 N.J. at 282-83.]

The Court has consistently enforced its holding in Parker whenever a PCR court has failed to provide its "reasons for not providing oral argument on [an] initial petition for post-conviction relief." State v. Daniels, 225 N.J. 338 (2016); see also State v. Scott, 225 N.J. 337 (2016); State v. Mitchell, 217 N.J. 300 (2014). Further, recent remand orders issued by the Court, signal a strong preference for allowing oral argument of PCR applications.

Accordingly, pursuant to the Court's holding in Parker, we vacate the February 12, 2016 order denying defendant PCR, and remand this matter for the purpose of permitting the parties to present oral argument to the PCR court. We do not retain jurisdiction.

Remanded for further proceedings consistent with this opinion.

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


CLERK OF THE APPELLATE DIVISION