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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-3999-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

REYNEL DELVALLE, a/k/a
MITO,

Defendant-Appellant.

Submitted October 26, 2017 – Decided December 7, 2017

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment No.
11-12-0175.

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

Christopher S. Porrino, Attorney General,
attorney for respondent (Jana Robinson, Deputy
Attorney General, of counsel and on the
brief).

PER CURIAM

Defendant Reynel Delvalle appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. For the reasons that follow, we affirm.

Defendant pled guilty to first-degree racketeering, N.J.S.A. 2C:41-2(c), pursuant to a plea agreement in which the State recommended a ten to fifteen year sentencing range, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The court later sentenced defendant to fourteen years subject to NERA in accordance with his plea agreement.

Defendant filed a direct appeal, challenging his sentence.¹ An excessive sentence panel of this court affirmed his sentence. See State v. Delvalle, No. A-4973-12 (App. Div. September 25, 2013). The Supreme Court denied defendant's petition for certification on July 3, 2014. State v. Delvalle, 218 N.J. 275 (2014).

The facts underlying defendant's convictions are summarized as follows. In 2010, through court-authorized electronic, telephone, and physical surveillance, the New Jersey State Police and the Camden County Police discovered that defendant and his codefendants were distributing heroin, cocaine and firearms. As part of the investigation, using information obtained through

¹ As part of his plea agreement, defendant waived his right to appeal his conviction.

wiretaps, police determined that defendant was involved in numerous sales of controlled dangerous substances and firearms. The police also conducted a controlled purchase of a substantial amount of heroin from defendant and one of his codefendants, which included acquiring a firearm from defendant as well. When they concluded their investigation, police arrested defendant. A grand jury issued a thirty-eight count indictment charging twenty-eight individuals, including defendant, with numerous crimes, including the first-degree racketeering charge to which defendant pled guilty.

When defendant pled guilty, he testified to the facts underlying the crime he committed. Defendant told the court that he participated in the enterprise identified in the indictment by conspiring to repeatedly sell CDS and firearms, including the sale of drugs and delivery of a firearm to the undercover police officer in the controlled purchase.

After being sentenced and pursuing his appeal, defendant filed a PCR petition on July 18, 2014. In his amended petition filed by PCR counsel, defendant argued that he received ineffective assistance from his trial counsel who failed to file a motion to suppress, coerced defendant into accepting the plea agreement, and failed to advise defendant of the penal consequences of his plea.

Defendant also claimed that appellate counsel failed to argue that his sentence was disparate from his co-defendant's sentence.

Judge John T. Kelley denied defendant's petition by order dated January 4, 2016, after finding defendant failed to present a prima facie claim for ineffective assistance of counsel. In his comprehensive oral decision, Judge Kelley rejected defendant's argument that his plea counsel was ineffective for failing to file a motion to suppress. The judge found that, contrary to defendant's contentions, the warrants obtained for the telephone surveillance were not defective² and the police had substantial probable cause to support the court issuing the warrants. The judge concluded there was no likelihood that the motion would have been successful. Judge Kelley also found no support for defendant's contention that trial counsel failed to properly advise him about his exposure under the plea agreement. The judge determined defendant's contentions were unsupported and belied by the record. Judge Kelley also rejected defendant's arguments

² In particular, defendant argued that during their intercepts the police failed to "minimize" as required by N.J.S.A. 2A:156A-12(f), the minimization provision of the New Jersey Wiretapping and Electronic Surveillance Control Act, N.J.S.A. 2A:156A-1 to -34. The provision requires that government officials monitoring wiretaps "mak[e] reasonable efforts" to minimize or eliminate the interception of conversations other than those they have been authorized to hear. See State v. Catania, 85 N.J. 418, 428-29 (1981).

about any disparity in defendant's sentence. The judge observed "the disparity can be explained through the defendant's criminal record which includes juvenile adjudications, drug offenses in school zones, aggravated assault and theft by deception convictions." He concluded that under these circumstances there was no significant difference in the sentences imposed on defendant and his codefendant, or that the four year difference shocked the "conscience of the Court." After finding that defendant failed to establish a prima facie claim, the judge denied defendant's request for an evidentiary hearing. This appeal followed.

Defendant presents the following issues for our consideration in his appeal.

POINT I

DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL ENTITLING [SIC] HIM TO POST CONVICTION RELIEF AND AN EVIDENTIARY HEARING.

A. Trial counsel was ineffective for having misinformed defendant as to his penal exposure thereby resulting in a coerced acceptance of defendant's plea.

B. Counsel was ineffective for failing to move to suppress the illegal search and seizure of evidence collected through wiretaps used to convict the defendant.

POINT II

DEFENDANT IS ENTITLED TO WITHDRAW HIS PLEA BECAUSE THE NATURE AND STRENGTH OF HIS CLAIM OUTWEIGH THE STATE'S INTEREST IN PRESERVING THE PLEA. (NOT RAISED BELOW)

POINT I[II]

DEFENDANT WAS DENIED THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILURE TO ARGUE DISPARITY IN SENTENCING ON APPEAL.

We are not persuaded by these arguments. We affirm, substantially for the reasons expressed by Judge Kelley in his thorough oral decision.

The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and adopted by our Supreme Court in State v. Fritz, 105 N.J. 42 (1987). In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-prong test of establishing that: (1) "counsel's performance was deficient" and he or she made errors that were so egregious "that counsel was not functioning" effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such that there exists a "reasonable probability that, but

for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, supra, 466 U.S. at 687, 694, 104 S. Ct. at 2064, 2068, 80 L. Ed. 2d at 693, 698.

This two-prong analysis applies equally to convictions after a trial or after a defendant pleads guilty. In the context of a PCR petition challenging a guilty plea, the first Strickland prong is satisfied when a defendant establishes a "reasonable probability that, but for counsel's errors, [he or she] would not have pled guilty. . . ." State v. Gaitan, 209 N.J. 339, 351 (2012). The second prong is met when a defendant establishes a reasonable probability he or she "would have insisted on going to trial." Ibid. "When a defendant has entered into a plea agreement, a deficiency is prejudicial if there is a reasonable probability that, but for counsel's errors, the defendant would not have decided to forego the plea agreement and would have gone to trial." State v. McDonald, 211 N.J. 4, 30 (2012) (citing Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203, 210 (1985); State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009)).


We conclude from our review of the record that, as Judge Kelley found, defendant failed to make a prima facie showing of ineffective assistance of trial counsel within the Strickland-Fritz test. We also note that, in addition to not establishing that counsel's performance was deficient, defendant failed to make

any showing that had he established that trial counsel rendered deficient performance, how the outcome in his case would have been any different – i.e., he would have passed on the plea offer and gone to trial, facing what could have amounted to, in the aggregate, a life sentence.

Accordingly, we agree with Judge Kelley that an evidentiary hearing was not warranted. See State v. Preciose, 129 N.J. 452, 462-63 (1992).

Affirmed.³

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


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³ To the extent we have not expressly addressed Point II of defendant's contention about the strength of his claim, we find the argument to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).