

**NOT FOR PUBLICATION WITHOUT THE  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-4023-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SKYLER GAINES,

Defendant-Appellant.

---

Submitted May 15, 2017 – Decided June 22, 2017

Before Judges Haas and Currier.

On appeal from the Superior Court of New  
Jersey, Law Division, Morris County,  
Indictment No. 10-01-0077.

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

Fredric M. Knapp, Morris County Prosecutor,  
attorney for respondent (Paula Jordao,  
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Skyler Gaines appeals from the denial of his  
petition for post-conviction relief (PCR) without an evidentiary

hearing. After reviewing the record in light of the applicable legal principles, we affirm.

Police were dispatched to an area after a report of a fight and stabbing. They encountered a large crowd of people and two victims. One person had severe stab wounds to his abdomen and arm; and a second victim had injuries to his head and eye. The police were given a description of the suspects and went to a nearby apartment building where they thought they might be located. Residents of the building directed the police to a specific apartment on the first floor.

One officer was outside the rear of the building when he observed a window being opened and several items being thrown out the window to the ground.<sup>1</sup> The officer saw defendant stick his head out of the window, but when he saw the officer, defendant retreated back into the room.

Several females let the police into the apartment and they observed defendant running from the bedroom area and removing his shirt. They restrained and handcuffed him.

---

<sup>1</sup> These items included a kitchen knife with dried blood on the blade and a bag containing clothing and a second knife.

Defendant gave a statement to the police after being advised of his Miranda<sup>2</sup> rights. Defendant stated that after hanging out and drinking with some friends at the apartment for several days, he went down the street and entered a home where a barbecue was taking place; however, he was asked to leave. When he told his friends that the people at the barbecue had given him "a hard time," several of them went over to the gathering. Defendant returned with a butcher knife and a butter knife. Defendant stated that he did not know the victim, but he did not like something the victim said, and he stabbed him.

Following a jury trial, defendant was found guilty of second-degree aggravated assault; fourth-degree aggravated assault; hindering apprehension or prosecution; tampering with evidence; possession of a weapon for an unlawful purpose and unlawful possession of a weapon. Defendant was found not guilty on several counts, and after a hung jury on several other counts, a mistrial was declared on those four counts.

We affirmed defendant's conviction in State v. Gaines, No. A-2068-11 (App. Div.), certif. denied, 219 N.J. 631 (2014). We remanded for resentencing on one count.

---

<sup>2</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Defendant filed a PCR petition pro se, and thereafter, was assigned counsel. Defendant asserted that his trial counsel had been constitutionally ineffective in his pretrial preparation and failure to call any favorable witnesses. He further contended that counsel had coerced defendant not to testify. In a comprehensive oral decision issued on March 8, 2016, Judge Thomas J. Critchley, Jr., discussed each of defendant's arguments, applied the legal standards under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) and State v. Fritz, 105 N.J. 42 (1987), and denied the petition.

Judge Critchley noted that defendant's claim that counsel had failed to "investigate, locate and then call witnesses" was

only cast in very broad conclusory vague terms. There are no – for example, witnesses who have come forward . . . and who have been cited by the defendant saying, well, I was prepared to testify to thus and so, . . . there is nothing that has developed or nor do I see how it could be developed that would in any way challenge the conclusive evidence that was presented.

The judge also took note of the discussion between the trial judge and trial counsel concerning defendant's decision not to testify. Counsel advised the trial judge that after a "considerable conversation" with defendant, including a discussion of the pros and cons of presenting testimony, trial counsel had recommended against taking the stand. The judge verified with

defendant that he agreed with the representations his attorney had made. Judge Critchley concluded, therefore, that defendant's argument in his PCR petition was inconsistent with the record. He further stated that there was little to be gained by testifying, as his testimony was likely to conflict with the direct evidence and his own statement provided to the police after arrest. The judge found defendant had not established a prima facie case entitling him to an evidentiary hearing, and the petition was denied.

Defendant presents the following points on appeal:

POINT I: DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ENTITLING HIM TO POST CONVICTION RELIEF AND AN EVIDENTIARY HEARING

(A) Counsel was ineffective for failing to conduct a minimally adequate pretrial investigation resulting in the failure to call favorable witnesses to assist in a defense

(B) Counsel was ineffective for violating defendant's constitutional right by coercing him not to testify on his own behalf

POINT II: UNDER THE DOCTRINE OF CUMULATIVE ERROR A NEW TRIAL SHOULD BE ORDERED PURSUANT TO STATE v. ORECCHIO, 16 N.J. 125, 129 (1954)

The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland v. Washington, supra, 466 U.S. at 668, 104 S. Ct.

at 2052, 80 L. Ed. 2d at 674, and adopted by our Supreme Court in State v. Fritz, supra, 105 N.J. at 42. In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the two-prong test of establishing both 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.

We are satisfied from our review of the record that defendant failed to meet his burden of proof as to a showing of ineffectiveness of trial counsel within the Strickland-Fritz test and conclude that his arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). As before the PCR court, defendant has not provided a certification with any potential witnesses who might have provided favorable testimony. We affirm substantially for the reasons expressed by Judge Critchley as reflected in his well-reasoned oral opinion.

Affirmed.