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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-4957-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DONALD A. ALLEN,

Defendant-Appellant.

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Submitted September 19, 2017 – Decided October 11, 2017

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Indictment No.  
03-08-0041.

Donald A. Allen, appellant pro se.

Christopher S. Porrino, Attorney General,  
attorney for respondent (Arielle E. Katz,  
Deputy Attorney General, of counsel and on the  
brief).

PER CURIAM

Defendant Donald A. Allen appeals from a March 17, 2016 order denying his motion to withdraw his guilty plea. We affirm because defendant failed to show any basis for his requested relief.

I.

In August 2003, defendant was indicted for first-degree distribution of marijuana, N.J.S.A. 2C:35-5(a)(1), N.J.S.A. 2C:35-5(b)(10)(a), N.J.S.A. 2C:35-5(c), and N.J.S.A. 2C:2-6, and second-degree conspiracy to distribute marijuana, N.J.S.A. 2C:5-2, N.J.S.A. 2C:35-5(a)(1), N.J.S.A. 2C:35-5(b)(10)(a), and N.J.S.A. 2C:35-10(a)(3). While those charges were pending, deportation proceedings were initiated against defendant, who is a Jamaican citizen, after he was convicted of violating probation in New York for separate charges.

Thereafter, on May 1, 2006, defendant pled guilty to first-degree distribution of marijuana. In the negotiated plea agreement, the State agreed to recommend a sentence of ten years in prison with thirty-six months of parole ineligibility.

On June 1, 2006, defendant was deported before he was sentenced. Accordingly, when defendant failed to appear for sentencing in July 2006, a bench warrant issued for his arrest.

In 2009, defendant re-entered this country illegally. Eventually he was arrested and convicted of other crimes in Arizona. After serving his sentence in Arizona, defendant was extradited to New Jersey in 2012. On October 3, 2012, defendant was sentenced for his 2006 New Jersey conviction. In accordance

with the plea agreement, defendant was sentenced to ten years in prison with thirty-six months of parole ineligibility.

In December 2012, defendant, representing himself, filed a motion to withdraw his guilty plea. Shortly thereafter, defendant, again representing himself, filed a petition for post-conviction relief (PCR). In his PCR petition, defendant alleged ineffective assistance of counsel for failing to advise him of the possibility of deportation, violations of due process for the delay in his sentencing, and related issues.

On May 5, 2014, the trial court denied defendant's PCR petition. On appeal, we affirmed and the Supreme Court denied certification. State v. Allen, Docket No. A-5472-13 (App. Div. Apr. 20, 2015), certif. denied, 223 N.J. 283 (2015).

On March 17, 2016, the trial court entered an order denying defendant's motion to withdraw his guilty plea. In support of that ruling, the trial court issued a comprehensive written opinion.

## II.

Defendant now appeals from the March 17, 2016 order denying his motion to withdraw his guilty plea. Defendant makes two arguments on appeal, which he articulates as follows:

POINT I — TRIAL COUNSEL['S] ACTIONS [TO]  
UNDERMINE[] DEFENDANT[']S ATTEMPT TO RETRACT

HIS PLEA DEPRIVED HIM OF THE EFFECTIVE ASSISTANCE OF COUNSEL.

POINT II — THE TRIAL COURT WAS PREJUDICE AND ABUSED ITS DISCRETION IN DENYING THE DEFENDANT[']S MOTION IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER THE SPEEDY TRIAL ACT OF THE SIXTH AMENDMENT.

Having reviewed the record, we conclude that all of defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add a few additional comments.

Defendant's arguments concerning the grounds for withdrawing his guilty plea all relate to events that happened after he pled guilty. In particular, defendant focuses on his deportation, the delay in his sentencing, and the delay in the ruling on his motion to withdraw his guilty plea. None of those contentions relate to the factors that might support a withdrawal of a guilty plea. See State v. Slater, 198 N.J. 145 (2009).

Motions to withdraw guilty pleas after sentencing are subject to the manifest injustice standard. R. 3:21-1. Courts evaluate four factors in assessing whether defendant has demonstrated a valid basis for withdrawing a guilty plea. Slater, supra, 198 N.J. at 157-58. Those factors are (1) whether defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence

of a plea bargain; and (4) whether the withdrawal would result in unfair prejudice to the State or unfair advantage to the accused. Ibid. Here, defendant has not established any of the Slater factors.


In short, defendant has not asserted a colorable claim of innocence; he has not set forth valid reasons for withdrawing his guilty plea; there was a valid and negotiated plea agreement; and a withdrawal at this late date would result in unfair prejudice to the State.

Defendant also argues that his trial counsel was ineffective in not supporting his motion to withdraw his guilty plea prior to his sentence in October 2012. This argument is flawed for two reasons. First, defendant should have raised this argument in his first PCR petition, and he is now barred from making the argument belatedly. R. 3:22-4(b). Second, even if we were to consider defendant's argument on its merits, he has not shown a prima facie case of ineffective assistance of counsel. As we have already reviewed, defendant has not satisfied the standard for withdrawing a guilty plea and, therefore, he cannot show prejudice. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984) (to establish a claim of ineffective assistance of counsel, defendant must show that counsel rendered inadequate representation and that the deficient

performance caused defendant prejudice). State v. DiFrisco, 137 N.J. 434, 457 (1994) (holding that a defendant must show a reasonable probability that, but for counsel's alleged error, defendant would not have pled guilty), cert. denied, 516 U.S. 1129, 116 S. Ct. 949, 113 L. Ed. 2d 873 (1996).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION