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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-5191-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTOINE DENNIS,

Defendant-Appellant.

Submitted June 7, 2017 – Decided July 14, 2017

Before Judges Alvarez and Lisa.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
06-11-2533.

Joseph E. Krakora, Public Defender, attorney
for appellant (Durrell Wachtler Ciccia,
Designated Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Paul H.
Heinzel, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant appeals from the March 27, 2015 order denying his post-conviction relief (PCR) petition and his request for an evidentiary hearing. Defendant is serving a term of life imprisonment with an eighty-five percent parole disqualifier pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, for knowing or purposeful murder, N.J.S.A. 2C:11-3a(1), together with a consecutive term of ten years' imprisonment with a five-year parole disqualifier for second-degree possession of a weapon by a convicted person, N.J.S.A. 2C:39-7b. The sentences were also ordered to be served consecutive to an eighteen-year sentence defendant is serving for a conviction in Hudson County. Defendant was also convicted of several other counts, for which separate sentences were not imposed as a result of mergers.

Defendant filed a direct appeal. We affirmed his convictions on all counts; however, on the State's cross-appeal, we reversed with respect to certain mergers. State v. Dennis, No. A-2956-10 (App. Div. Nov. 29, 2012).

Defendant filed a pro se PCR petition on February 28, 2013, which did not set forth any claims for relief. Subsequently, counsel was assigned and filed a new petition on December 3, 2013. Counsel filed a supporting brief on August 22, 2014. The petition enumerated thirteen allegations of ineffective assistance by trial

counsel and two allegations of ineffective assistance by appellate counsel.

In his new petition, defendant contended that a reasonable probability existed that but for the errors of trial counsel the result of the trial would have been different, and but for the errors of appellate counsel, a reasonable probability existed that the outcome of the appeal would have been different. Defendant requested an evidentiary hearing into the allegations contained in the petition.

The matter came before Judge Anthony J. Mellaci, Jr. for oral argument on March 27, 2015. Judge Mellaci had presided over defendant's trial and was thoroughly familiar not only with the trial, but with the plea negotiations that had transpired with defendant, as well as his two co-defendants. Likewise, the judge had presided over pretrial proceedings and made rulings on the admissibility of evidence after conducting hearings as required. It is very clear to us from a review of the transcript of March 27, 2015, that Judge Mellaci, with the assistance of his notes, possessed a clear and thorough understanding and recollection of all aspects of the pretrial proceedings, the trial, and the sentencing, as they related to the issues raised in defendant's PCR petition.

In setting forth the issues, the judge consolidated several of the thirteen points raised with respect to trial counsel which dealt with similar subjects, and enumerated nine such issues as follows: (1) "the trial counsel failed to communicate the defendant's plea offer to the State;" (2) "trial counsel provided a generic and insufficient opening statement;" (3) "trial counsel failed to procure a prior statement made by Jaashawn Jones;" (4) "trial counsel's cross-examination of Patrolman Whitley, Robert Angelini, and Sergeant Meany was insufficient and ineffective;" (5) "trial counsel failed to object to testimony of Detective Toro, which described an interview with the defendant;" (6) "trial counsel failed to object to . . . [Sheazel] Collins' testimony that Pizzarelli had been . . . locked up;" (7) "trial counsel's closing argument was inappropriate and prejudicial;" (8) "trial counsel failed to object to damaging and inappropriate comments made by the State during its closing argument;" and (9) "trial counsel conceded that defendant qualified for an extended term eligibility as a persistent offender."

After hearing oral argument, the judge issued a comprehensive oral opinion consuming twenty-eight transcript pages. He addressed in turn each of the nine restated allegations of ineffective assistance by trial counsel. He rejected each of them

either on procedural or substantive grounds, or both. For each allegation he referred to the applicable portion of the trial proceeding and cited the controlling legal principles. With respect to appellate counsel, he described the allegations and noted for the record that he had reviewed them. He then stated that the allegations were "baseless" and did not warrant specific discussion.

Based upon his findings, Judge Mellaci concluded as follows:

According to Rule 3:22-10 a trial [c]ourt has discretion to order an evidentiary hearing under a defendant's post-conviction relief petition, during which oral testimony is taken.

In order to be granted an evidentiary hearing the defendant must make a prima facie case in support of his ineffective assistance of counsel claim. State v. Preciose, [129 N.J. 451, 462-63 (1992)].

This means the defendant must demonstrate a reasonable likelihood his claim will succeed on the merits. In making this determination [c]ourts view the facts in a light most favorable to the defendant. Preciose at 463.

It is the opinion and finding of this [c]ourt that the defendant has not demonstrated that his trial counsel or appellate counsel's representation fell below an objective standard of reasonableness or demonstrated a reasonable likelihood that any of these claims, either solely or together, will succeed on the merits.

Each of the defendant's arguments is either procedurally barred or based on nothing more than defendant's own self-serving b[a]ld assertions; therefore, the defendant is not entitled to an evidentiary hearing and his petition for post-conviction relief is denied.

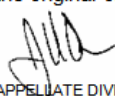
On appeal, defendant raises a single issue:

THE LOWER COURT ERRED IN DENYING DEFENDANT'S
REQUEST FOR AN EVIDENTIARY HEARING.

We reject defendant's argument. We have reviewed the record, and we are in full agreement with Judge Mellaci's findings, analysis, and conclusion. Defendant's arguments are plainly lacking in merit and do not warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Mellaci in his thorough and well-reasoned oral opinion of March 27, 2015, denying defendant's PCR petition and declining to order an evidentiary hearing.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION