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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-5277-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYRANE MATHIS,

Defendant-Appellant.

Submitted November 28, 2017 — Decided December 13, 2017

Before Judges Carroll and Leone.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
10-11-0154.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kevin G. Byrnes, Designated
Counsel, on the brief).

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

PER CURIAM

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

On November 4, 2010, a State grand jury indicted defendant on seven charges, including first-degree racketeering, N.J.S.A. 2C:41-2c, N.J.S.A. 2C:41-2d, and N.J.S.A. 2C:5-2; first-degree conspiracy to commit murder, N.J.S.A. 2C:11-3a and N.J.S.A. 2C:5-2; first-degree murder, N.J.S.A. 2C:11-3a(1), N.J.S.A. 2C:11-3a(2), and N.J.S.A. 2C:2-6; first-degree attempted murder, N.J.S.A. 2C:11-3, N.J.S.A. 2C:5-1, and N.J.S.A. 2C:2-6; second-degree aggravated assault, N.J.S.A. 2C:12-1b(1) and N.J.S.A. 2C:2-6; second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5b and N.J.S.A. 2C:2-6; and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4a and N.J.S.A. 2C:2-6.

On December 1, 2010, defendant pled guilty to the racketeering charge, and the State agreed to dismiss the remaining charges. The State further agreed to recommend that defendant be sentenced to twelve years in prison, subject to an eighty-five percent period of parole ineligibility under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to run concurrently with a sentence defendant was already serving in North Carolina. On March 3, 2011, the court sentenced defendant in accordance with the plea agreement.

Defendant appealed his sentence. We affirmed on our Excessive Sentencing Oral Argument Calendar. State v. Mathis, No. A-0339-11 (App. Div. March 8, 2012). Defendant did not file a petition for certification.

On June 4, 2015, defendant filed a PCR petition in which he contended he was denied the effective assistance of plea counsel. Specifically, he alleged plea counsel was deficient because he failed to: investigate the case; challenge defendant's identification; advise defendant of his maximum sentence exposure; provide defendant with full and complete discovery; explain the racketeering charge to defendant; and pursue defendant's speedy trial rights under the Interstate Agreement on Detainers.¹

Judge Mitzy Galis-Menendez denied defendant's petition on March 9, 2016, setting forth her reasons in a cogent written opinion. Citing State v. Cummings, 321 N.J. Super. 154, 170 (App. Div.), certif. denied, 162 N.J. 199 (1999), the judge noted that a defendant "must do more than make bald assertions that he was denied the effective assistance of counsel." Further, "[w]hen a petitioner claims his trial attorney inadequately investigated his case, he must assert the facts that an investigation would have

¹ In New Jersey, the Interstate Agreement on Detainers is codified as N.J.S.A. 2A:159A-1 to -15.

revealed, supported by affidavits or certifications based upon the personal knowledge of the affiant or the person making the certification." Ibid. Here, the judge found defendant failed to meet this standard because he did not allege "any specific facts to demonstrate [c]ounsel's substandard performance[.]" In a similar vein, with respect to counsel's alleged failure to provide defendant with complete discovery, the judge found defendant failed to "specifically state what discovery he was not provided with."

In rejecting defendant's argument that counsel failed to challenge his identification, Judge Galis-Menendez noted defense counsel filed a motion pursuant to United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967). The judge noted "[t]he Wade hearing was not held because [defendant] elected to plead guilty before the hearing." Citing State v. Davis, 116 N.J. 341, 357 (1989), the judge determined "[t]he decision to plead guilty rather than proceed with the Wade hearing appears to have been a strategic one, and does not form the basis for an ineffective assistance of counsel claim."

The judge found defendant's remaining claims of ineffective assistance of counsel were belied by the record. In rejecting defendant's contention that plea counsel failed to advise him of the maximum sentence or explain racketeering to him, the judge

noted "[t]he record reveals that [defendant] was advised by the [c]ourt that he could have been sentenced to twenty [] years in state prison on the racketeering charge" and "[defendant] acknowledged that he understood his maximum exposure under the law." Similarly, "during the plea, [c]ounsel went through each element of the offense with [defendant] while eliciting the factual basis for the plea." The judge also found that "during the plea [defendant] waived all rights under the Interstate Agreement on Detainers."

Judge Galis-Menendez found no merit in defendant's argument that plea counsel incorrectly informed him that his time served in North Carolina would reduce his sentence. The judge noted "at the plea it was very clearly explained to [defendant] that he would be required to serve [eighty-five percent] of his twelve[-]year sentence (ten years, two months, and thirteen days)." Also, the sentencing judge explained how defendant's gap time credit would be applied and, due to his NERA parole ineligibility period, it was "not really credit."

Judge Galis-Menendez concluded that because defendant did not establish a prima facie showing of ineffective assistance of counsel, no evidentiary hearing was required. This appeal followed, in which defendant presents the following issues for our consideration:

POINT I

[] DEFENDANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ART. I, PAR. 10 OF THE NEW JERSEY CONSTITUTION.

A. Trial Counsel Failed To Inform [] Defendant Accurately and Completely on the Terms and Conditions of the Plea Agreement.

B. Trial Counsel Failed to Investigate the Facts and Present Defenses.

C. The Cumulative Effect of Counsel's Deficiencies Resulted in an Unfair Procedure.

POINT II

[] DEFENDANT IS ENTITLED TO AN EVIDENTIAL HEARING.

POINT III

[] DEFENDANT INCORPORATES BY REFERENCE THE ARGUMENTS ADVANCED IN HIS PRO SE PETITION.

Finding no merit in these arguments, we affirm.

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 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.

Prejudice in a guilty plea case consists of showing "a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203, 210 (1985). Further, "a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372, 130 S. Ct. 1473, 1485, 176 L. Ed. 2d 284, 297 (2010).

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing. Cummings, supra, 321 N.J. Super. at 170. When determining whether to grant an evidentiary hearing, the PCR court must consider the facts in the light most favorable to the defendant to determine if a defendant has established a prima facie claim. State v. Preciose, 129 N.J. 451, 462-63 (1992). It follows that a "defendant must allege specific

facts and evidence supporting his allegations[,]" State v. Porter, 216 N.J. 343, 355 (2013), and "must do more than make bald assertions that he was denied the effective assistance of counsel." Cummings, supra, 321 N.J. Super. at 170. PCR petitions must be "accompanied by an affidavit or certification by defendant, or by others, setting forth with particularity the facts that he wished to present." State v. Jones, 219 N.J. 298, 312 (2014).

We are satisfied from our review of the record that defendant failed to make a prima facie showing of ineffectiveness of counsel within the Strickland-Fritz test, substantially for the reasons stated by Judge Galis-Menendez in her thoughtful written opinion. Accordingly, the judge correctly concluded that an evidentiary hearing was not warranted. See Preciose, supra, 129 N.J. at 462-63.

To the extent we have not specifically addressed arguments raised by defendant in his pro se petition, we find them without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



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