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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-5561-14T2  
A-2449-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ERIC JAMES,

Defendant-Appellant.

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STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

REGINALD FELTON, a/k/a REGGIE MOORE,

Defendant-Appellant.

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Submitted May 2, 2017 – Decided July 21, 2017

Before Judges Messano and Suter.

On appeal from the Superior Court of New  
Jersey, Law Division, Union County, Indictment  
No. 09-10-0966.

Joseph E. Krakora, Public Defender, attorney  
for appellants (William Welaj, Designated  
Counsel in A-5561-14, on the brief; Mark

Zavotsky, Designated Counsel in A-2449-15, on the brief).

Grace H. Park, Acting Union County Prosecutor, attorney for respondents (Bryan S. Tiscia, Special Deputy Attorney General/Acting Assistant Prosecutor in A-5561-14, of counsel and on the brief; Meredith L. Balo, Special Deputy Attorney General/Acting Assistant Prosecutor in A-2449-15, of counsel and on the brief).

PER CURIAM

In A-5561-14, defendant Eric James appeals from the order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. In A-2449-15, defendant Reginald Felton appeals from the order denying his PCR petition without an evidentiary hearing. We have consolidated the appeals to issue a single opinion.

Defendants were tried together before Judge William A. Daniel and a jury. The evidence demonstrated that police responded to the report of a fight and saw the victim being pulled from a car by one man while another was beating the victim over the head with a furniture leg. The two men fled while police gave chase, eventually losing sight of the suspects. Police entered an abandoned house and found Felton in a second-floor bedroom and James in the attic. They found a bloody wooden table leg in a nearby empty lot, and DNA testing matched the victim's blood to

that on the furniture leg. Both officers identified defendants in court.

The jury convicted both defendants of two counts of aggravated assault, unlawful possession of a weapon, and possession of a weapon for an unlawful purpose. The jury also convicted Felton of obstruction. We affirmed defendants' convictions and sentences on appeal. State v. James, A-4049-11 (App. Div. Sept. 23, 2013); State v. Felton, A-3529-11 (App. Div. Sept. 23, 2013). The Supreme Court denied their petitions for certification. 217 N.J. 304 (2014).

Defendants filed PCR petitions, and counsel were appointed to represent each. James alleged trial counsel provided ineffective assistance (IAC), asserting counsel failed to request a Wade<sup>1</sup> hearing regarding the officers' identification, failed to thoroughly investigate the case, particularly the victim's whereabouts prior to the assault, and failed to properly represent defendant at sentencing. James' appointed PCR counsel also argued trial counsel's cross-examination of the victim was insufficient, and counsel failed to object to the admission of prejudicial testimony.

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<sup>1</sup> United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967).

Felton also asserted an IAC claim. He, too, claimed trial counsel failed to properly investigate and prepare for trial, and failed to conduct forensic examinations of his clothing, the furniture leg and the victim's car. Felton also alleged trial counsel failed to make certain arguments, including Felton's medical problems that allegedly made it unlikely he could have fled the officers, and object at various times during trial.

Judge Stuart L. Peim considered oral argument and issued a detailed written decision in support of his June 22, 2015 order denying James' petition. After appropriately reviewing the trial testimony and applicable legal standards, Judge Peim concluded James failed to demonstrate what information counsel's "allegedly unperformed investigation would have disclosed and that it would have had an effect on the outcome of the case." Regarding the alleged inadequate investigation of the victim's whereabouts, Judge Peim concluded that "[e]ven if evidence was presented that the victim was drinking and in a fight prior to the incident," that "would not have affected the outcome," given the overwhelming strength of the State's case.

Judge Peim rejected James' assertions about counsel's inadequate cross-examination, finding the evidence "was all thoroughly before the jury." The judge also rejected any claim that defendant was prejudiced by counsel's failure to object to

certain testimony, or that counsel failed to adequately advocate at the time of sentencing. Judge Peim concluded James failed to satisfy either prong of the Strickland/Fritz<sup>2</sup> standard.

Following oral argument, Judge Daniel rendered an oral decision in support of his December 1, 2015 order denying Felton's PCR petition. After thoroughly reviewing the trial evidence, appropriately setting forth the Strickland/Fritz standard and reviewing each of Felton's claims, Judge Daniel concluded Felton failed to make a prima facie IAC showing.

Before us, James argues we should reverse for an evidentiary hearing on his IAC claims, specifically, that trial counsel failed to adequately investigate the whereabouts of the victim and the victim's girlfriend and cross-examine the victim at trial. Felton urges us to reverse and remand for an evidentiary hearing on his petition. He contends trial counsel failed to adequately investigate and "adopt a defense strategy against the charge of aggravated assault," failed to object to the prosecutor's summation and failed to request a mistrial based on inadmissible testimony given by one of the officers. Felton argues these "cumulative error[s]" require a new trial.

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<sup>2</sup> Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Fritz, 105 N.J. 42 (1987).

These arguments lack sufficient merit to warrant extensive discussion in a written opinion, Rule 2:11-3(e)(2), and we affirm substantially for the reasons expressed by Judges Peim and Daniel. We add only the following.

Under the two-prong Strickland/Fritz standard, a defendant must first show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Fritz, supra, 105 N.J. at 52 (quoting Strickland, supra, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693). We apply a "highly deferential standard, which requires us to avoid viewing counsel's performance through the 'distorting effects of hindsight.'" State v. Hess, 207 N.J. 123, 147 (2011) (quoting Strickland, supra, 466 U.S. at 689, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694).

To satisfy prong one, [a defendant] ha[s] to overcome a strong presumption that counsel exercised reasonable professional judgment and sound trial strategy in fulfilling his responsibilities. [I]f counsel makes a thorough investigation of the law and facts and considers all likely options, counsel's trial strategy is virtually unchallengeable. Mere dissatisfaction with a counsel's exercise of judgment is insufficient to warrant overturning a conviction.

[State v. Nash, 212 N.J. 518, 542 (2013) (citations and internal quotation marks omitted) (third alteration in original).]

Second, a defendant must show by a "reasonable probability" that the deficient performance affected the outcome. Fritz, supra, 105 N.J. at 52. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." State v. Pierre, 223 N.J. 560, 583 (2015) (quoting Strickland, supra, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698; Fritz, supra, 105 N.J. at 52).

Our Rules anticipate the need to hold an evidentiary hearing "only upon the establishment of a prima facie case in support of post-conviction relief." R. 3:22-10(b). A "prima facie case" requires a defendant "demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits," ibid., and must be supported by "specific facts and evidence supporting his allegations." State v. Porter, 216 N.J. 343, 355 (2013). "In order for a claim of ineffective assistance of counsel to entitle a PCR petitioner to an evidentiary hearing, bald assertions are not enough – rather, the defendant must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Jones, 219 N.J. 298, 311-12 (2014) (internal quotation marks omitted).


Here, James asserts that he requested counsel investigate the victim's whereabouts before the assault, alleging that the victim

was in a fight in a tavern, something the victim denied at trial. As Judge Peim noted, these assertions lack any support in the record. Defendant also claims he requested counsel interview the victim's girlfriend, who may not have corroborated the victim's version of the night's events, but there is nothing to support this claim either.

Felton's assertions that forensic tests would have revealed his clothing lacked any trace of the victim's blood, and his fingerprints were not on the door of the victim's car lack any support in the record. Moreover, as Judge Daniel noted, the lack of such forensic evidence hardly mattered, given the strength of the State's case. As to Felton's remaining claims, trial counsel's failure to object or ask for a mistrial do not amount to reversible error, and, therefore, cannot support a prima facie IAC claim. State v. Echols, 199 N.J. 344, 361 (2009).

Affirmed in A-5561-14; affirmed in A-2449-15.

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

  
CLERK OF THE APPELLATE DIVISION