

**NOT FOR PUBLICATION WITHOUT THE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-5845-13T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD NUNEZ,

Defendant-Appellant.

Submitted October 11, 2016 – Decided March 16, 2017

Before Judges Espinosa and Guadagno.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment Nos.
94-11-2652, 96-04-0730, 96-08-1835 and 97-02-
0301.

Joseph E. Krakora, Public Defender, attorney
for appellant (Alan I. Smith, Designated
Counsel, on the brief).

Diane M. Ruberton, Acting Atlantic County
Prosecutor, attorney for respondent (Elliott
J. Almanza, Special Deputy Attorney General/
Acting Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant appeals from the denial of his petition for post-conviction relief (PCR). The sole issue he raises on appeal is:

THE ORDER DENYING POST-CONVICTION RELIEF SHOULD BE REVERSED BECAUSE THE PCR COURT MISAPPLIED ITS DISCRETION IN DENYING DEFENDANT'S PETITION WITHOUT AFFORDING DEFENDANT AN OPPORTUNITY TO PRESENT ORAL ARGUMENT ON BEHALF OF DEFENDANT BY SECURING A CERTIFICATION FROM PCR COUNSEL WAIVING ORAL ARGUMENT OR BY PROVIDING A STATEMENT OF REASONS EXPLAINING WHY IT DENIED ORAL ARGUMENT.

It is, therefore, only necessary for us to review the facts and legal principles that pertain to this issue.

In State v. Parker, 212 N.J. 269, 283 (2012), the Supreme Court endorsed the principle that "there is a strong presumption in favor of oral argument in connection with an initial petition for post-conviction relief," and stated further that the "[d]efendant and his attorney were entitled to rely on the existence of such a presumption in preparing their papers," even without making a specific argument for oral argument. Although the Court acknowledged that the trial court retains discretion to determine whether to hear oral argument or dispense with it, the Court instructed the analysis of relevant factors "should be approached with the view that oral argument should be granted," id. at 282, and facts should be viewed in the light most favorable

to the defendant. Ibid. The Court further directed that, if the trial court decides against hearing oral argument,

[T]he judge should provide a statement of reasons that is tailored to the particular application, stating why the judge considers oral argument unnecessary. A general reference to the issues not being particularly complex is not helpful to a reviewing court when a defendant later appeals on the basis that the denial of oral argument was an abuse of the trial judge's discretion.

[Id. at 282-83.]

Since Parker was decided, the Court has summarily reversed cases in which the denial of PCR had been affirmed by this court where the Court concluded the PCR court had failed to provide adequate reasons for denying oral argument that would overcome the strong presumption in favor of oral argument established in Parker. See, e.g., State v. Morales, ___ N.J. ___ (2016); State v. J.R., 226 N.J. 210 (2016); State v. Daniels, 225 N.J. 338 (2016); State v. Scott, 225 N.J. 337 (2016). In each of these cases, the Court remanded to the trial court for oral argument on the defendant's PCR petition.

In August 2013, defendant filed a pro se PCR petition, his first, in which he asked for an evidentiary hearing on his claim of ineffective assistance of counsel. In May 2014, after an order was entered assigning counsel, designated counsel submitted a letter brief to the court setting forth arguments on behalf of the

petition, asking that PCR be granted or, in the alternative, that the court conduct an evidentiary hearing.

By letter dated June 19, 2014, the PCR judge denied the petition and set forth a statement of reasons for denying the petition. There was, however, no oral argument on the petition and the PCR judge did not set forth any reasons as required by Parker to explain the decision not to hear oral argument. Plainly, the absence of any reasons is inadequate to overcome the strong presumption in favor of oral argument established in Parker. We are, therefore, constrained to reverse the denial of defendant's petition and remand for the court to conduct oral argument on defendant's PCR petition.

Reversed. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION