

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0319-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

S.O.G.,¹

Defendant-Appellant.

Submitted March 8, 2017 — Decided May 31, 2018

Before Judges Fuentes and Simonelli.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
08-08-1323.

Joseph E. Krakora, Public Defender, attorney
for appellant (Monique Moyse, Designated
Counsel, on the brief).

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Jason M. Boudwin,
Assistant Prosecutor, of counsel and on the
brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

¹ We use initials to identify defendant, the child victim, and other members of her family to protect the confidentiality of the child. R. 1:38-3(c)(9) and N.J.S.A. 2A:82-46b.

Defendant S.O.G. appeals from the order of the Criminal Part denying his post-conviction relief (PCR) petition. We affirm.

On September 29, 2009, a jury convicted defendant of first degree aggravated sexual assault, N.J.S.A. 2C:14-2a, second degree sexual assault, N.J.S.A. 2C:14-2b, and second degree endangering the welfare of a child, N.J.S.A. 2C:24-4a. The victim was defendant's stepdaughter. On February 22, 2010, the trial judge sentenced defendant to an aggregate term of twenty years, with an eighty-five percent period of parole ineligibility and five years of parole supervision, as mandated by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

This court affirmed defendant's conviction but vacated the sentence imposed by the court because the trial judge improperly relied on the victim's young age to support finding aggravating factor two, N.J.S.A. 2C:44-1a(2). We thus remanded the matter for the court to resentence defendant without considering this aggravating factor. State v. S.O.G., A-3864-09 (App. Div. Dec. 20, 2011), slip op. at 27. Although defendant also claimed he was denied the effective assistance of counsel during trial, we declined to address this issue on direct appeal. Id. at 32. The Supreme Court denied defendant's petition for certification. State v. S.O.G., 210 N.J. 263 (2012).

On January 28, 2011, the trial judge resentenced defendant without consideration of aggravating factor two, N.J.S.A. 2C:44-1a(2), and imposed the same aggregate term of twenty years, subject to the parole ineligibility restrictions of NERA. Defendant appealed this sentence under the summary review process available pursuant to Rule 2:9-11. We affirmed subject to a correction in the Judgment of Conviction to include mitigating factor seven, N.J.S.A. 2C:44-1b(7). State v. S.O.G., A-4961-12 (App. Div. Sept. 25, 2013).

On August 25 2014, defendant filed this pro se PCR petition. The PCR judge, who was the same judge who tried the case, assigned defendant counsel to represent him in the prosecution of the petition. PCR counsel thereafter prepared and submitted a brief in which he argued defendant received ineffective assistance from his trial and appellate counsel. The matter came for oral argument on June 25, 2015. As framed by defendant's counsel in the brief filed in this appeal, defendant:

claimed that trial and appellate counsel were ineffective for failing to argue that NERA did not apply to his case and that he was convicted of acts not charged in the indictment, and that trial counsel was ineffective for failing to advocate at sentencing, communicate, discuss trial strategy, call witnesses investigate, and adequately defend against the [S]tate's charges.

After considering the arguments of counsel, the PCR judge found defendant did not establish a prima facie case of ineffective assistance of counsel and denied the petition without conducting an evidentiary hearing. Defendant now appeals raising the following argument:


POINT ONE

[DEFENDANT] IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS ATTORNEYS RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL.

We review a claim of ineffective assistance of counsel under the two-prong test established by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984), and subsequently adopted by our Supreme Court in State v. Fritz, 105 N.J. 42, 58 (1987). First, defendant must demonstrate that defense counsel's performance was deficient. Strickland, 466 U.S. at 687. Second, he must show there exists "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. Here, defendant's unsupported allegations did not establish a prima facie case of ineffective assistance of counsel. See State v. Preciose, 129 N.J. 451, 462-63 (1992).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION