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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-0719-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROBERT MCCALLUM,

Defendant-Appellant.

Submitted January 22, 2018 – Decided February 5, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
93-12-1844.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kisha M. Hebbon, Designated
Counsel, on the brief).

Denis Calo, Acting Bergen County Prosecutor,
attorney for respondent (Michael R. Philips,
Special Deputy Attorney General/Acting
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Robert McCallum appeals from a September 7, 2016 order denying his third petition for post-conviction relief ("PCR"). We affirm.

The pertinent background has been set forth previously in several prior opinions. After a jury trial in 1995, defendant was found guilty of murder, possession of a weapon for an unlawful purpose, and possession of a handgun without a permit. He was acquitted of felony murder and first-degree robbery. The State's theory at trial was that defendant lured the homicide victim to a parking lot of an apartment building, where the victim, an alleged drug dealer, was killed. Defendant steadfastly maintained his innocence and contended that he was not the person who killed the victim.

Following the jury trial, the trial court imposed a life sentence with a thirty-year parole disqualifier. Defendant's conviction was upheld on direct appeal in 1997 and the Supreme Court denied certification. State v. McCallum, No. A-6507-94 (App. Div. Sept. 25, 1997), certif. denied, 153 N.J. 404 (1998).

Defendant thereafter filed two successive PCR petitions, both of which resulted in denials by the trial court that this court affirmed on appeal. State v. McCallum, No. A-5276-99 (App. Div. Oct. 15, 2001), certif. denied, 172 N.J. 180 (2002); State v. McCallum, No. A-3196-07 (App. Div. Feb. 6, 2009). In addition,

defendant unsuccessfully pursued habeas corpus relief in the federal courts. McCallum v. Moore, No. 03-2529 (D.N.J. Dec. 7, 2005).

In his present third petition for PCR, defendant contended that his trial counsel was ineffective in allegedly failing to tell him about a supposed pretrial offer by the State to plead to a lesser-included offense of aggravated manslaughter. He claims he learned about this supposed offer only after speaking with his former trial counsel about the subject in 2013.

Significantly, defendant did not provide to the PCR court a certification from his former trial counsel substantiating the alleged plea offer by the State. In addition, a letter dated March 14, 1995 from defendant's trial counsel to the assistant prosecutor, sent after the State had won suppression motions, "wonder[ed] if you had given any consideration to a possible plea offer in this matter." The record is bereft of evidence that the State responded to this letter by making any plea offer. In fact, the issuance of such an offer was unlikely because defendant was maintaining his innocence and the State was in a position of strength after prevailing on the suppression motions.

Judge Edward Jerejian, the judge who fielded this PCR application, issued a written decision on September 7, 2016 denying the petition without an evidentiary hearing.

Defendant now argues on appeal:

POINT I

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S PETITION FOR POST CONVICTION RELIEF WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING TO DETERMINE THE MERITS OF HIS CONTENTION THAT HE WAS DENIED THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL.

A. The Prevailing Legal Principles regarding Claims of Ineffective Assistance Of Counsel, Evidentiary Hearings And Petitions for Post Conviction Relief.

B. Trial Counsel Rendered Ineffective Legal Representation By Virtue Of His Failure To Inform Defendant Of The State's Plea Offer Prior To Trial.

C. Defendant Is Entitled To A Remand To The Trial Court To Afford Him An Evidentiary Hearing To Determine The Merits Of His Contention That He Was Denied The Effective Assistance Of Trial Counsel.

Substantially for the sound reasons cited by Judge Jerejian, we affirm the denial of this latest PCR petition. Defendant has not established a prima facie case of trial counsel's ineffectiveness warranting an evidentiary hearing under Strickland v. Washington, 466 U.S. 668, 687 (1984). See State v. Preciose, 129 N.J. 451, 462-63 (1992). There is simply no competent evidence in the record indicating that the State ever made a pretrial plea offer to this defendant.

The 2013 hearsay assertion that defendant attributes to his former trial counsel, who supposedly recalled nearly two decades after the 1995 trial that the State had made such an offer, is insufficient to require an evidentiary hearing. As Judge Jerejian correctly perceived, such "bald assertions" are inadequate to warrant an evidentiary hearing on PCR. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) (noting that PCR relief requires more than "bald assertions" by a defendant); see also R. 3:22-10(b); State v. Porter, 216 N.J. 343, 356-57 (2013) (reaffirming these principles in evaluating which of a defendant's various PCR claims warranted 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