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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-1193-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GARRET MATTOX, a/k/a  
DEREK PEOPLES,

Defendant-Appellant.

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Submitted May 14, 2018 — Decided May 25, 2018

Before Judges Rose and Firko.

On appeal from Superior Court of New Jersey,  
Law Division, Union County, Indictment No.  
10-12-1206.

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

Michael A. Monahan, Acting Union County  
Prosecutor, attorney for respondent (Izabella  
M. Wozniak, Special Deputy Attorney  
General/Acting Assistant Prosecutor, of  
counsel and on the brief).

PER CURIAM

Defendant Garret W. Mattox appeals from a September 28, 2016  
order denying his petition for post-conviction relief (PCR) after

oral argument, but without an evidentiary hearing. We affirm, substantially for the reasons expressed in Judge John M. Deitch's written opinion.

Following trial, defendant was convicted of first degree robbery and second degree aggravated assault, and was sentenced to an aggregate twenty-year sentence subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. See State v. Mattox, No. A-0644-12 (App. Div. Dec. 26, 2014) (slip op. at 1) (affirming defendant's convictions on direct appeal), certif. denied, 222 N.J. 15 (2015). The victim, an adult male, was brutally assaulted by defendant on January 14, 2010, outside of a restaurant. At the time of arrest, the victim's wallet was found on defendant after he dislodged it from the victim during the assault. There were no eyewitnesses. Defendant's trial counsel argued that the surveillance video did not conclusively establish defendant being at the scene.

Defendant presented a zealous defense at his trial. He called witnesses and presented demonstrative evidence, including the surveillance video.

On appeal, defendant argues:

POINT I:

DEFENDANT WAS ENTITLED TO POST-CONVICTION RELIEF, OR, IN THE ALTERNATIVE, WAS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL.

New Jersey courts follow the rule formulated by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish ineffective assistance a defendant must identify acts or omissions showing unreasonable professional judgment, and then must demonstrate that these errors had a prejudicial effect on the conviction. State v. Fritz, 105 N.J. 42, 58 (1987). The same standards are applied to ineffective assistance of appellate counsel claims. State v. Harris, 181 N.J. 391, 518 (2004).

In reviewing claims of ineffective assistance of counsel, we apply a strong presumption that defense counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy of representation by counsel." Fritz, 105 N.J. at 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963)). "The quality of counsel's performance cannot be fairly assessed by focusing on a handful of issues while ignoring the totality of counsel's performance in the context of the State's evidence of defendant's guilt." State v. Castagna, 187 N.J. 293, 314 (2006) (citation omitted). "As a general rule, strategic miscalculations or trial mistakes are insufficient to warrant reversal 'except in those rare instances where they are

of such magnitude as to thwart the fundamental guarantee of [a] fair trial.'" Id. at 314-15 (quoting State v. Buonadonna, 122 N.J. 22, 42 (1991)).

Judge Deitch reviewed in detail defendant's various claims of his former counsel's trial errors and claims of ineffective appellate counsel. On appeal, defendant combined those theories into the following categories: 1) failure to argue affirmatively to the jury that defendant was only guilty of theft; 2) failure to argue "afterthought theft" because defendant claims that he did not have the intent to steal the victim's wallet until after the assault and, therefore, defendant did not have the mens rea required to prove robbery; 3) deficient performance; 4) ineffectiveness of appellate counsel; 5) cumulative errors; 6) prejudice; and 7) other claims.<sup>1</sup>

Judge Deitch discussed the alleged errors in light of the State's evidence and found that had his trial counsel utilized the strategies now advanced in hindsight by defendant, there was "no showing of any eventuality that would have resulted in a different result at trial." Post-trial and post-appeal disagreement with

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<sup>1</sup> Judge Deitch noted that during oral argument, PCR counsel modified his position to include an argument that afterthought theft was not charged to the jury.

strategy do not constitute ineffective assistance of counsel.  
Castagna, 187 N.J. at 314-15.

We find no error in denying defendant an evidentiary hearing, as Judge Deitch correctly found that there was no showing of a prima facie case of ineffective assistance of counsel because it was clear from statements made during his opening and summation that counsel argued that defendant was not guilty of robbery or the underlying theft itself. State v. Preciose, 129 N.J. 451, 462 (1992).

Judge Deitch determined that defendant failed to demonstrate that his trial or appellate counsel was constitutionally defective. He delineated his sound reasons in a careful and thorough thirteen-page written opinion, which we adopt.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION