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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-2745-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JEROME L. FAUCETTE, a/k/a
LEROY DANIEL THOMAS,

Defendant-Appellant.

Submitted April 12, 2018 – Decided June 4, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Indictment
No. 08-08-0865.

Joseph E. Krakora, Public Defender, attorney
for appellant (Kimmo Z.H. Abbasi, Designated
Counsel, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Jane C. Schuster, Deputy
Attorney General, of counsel and on the
brief).

PER CURIAM

Defendant, Jerome Faucette, appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. For the reasons that follow, we affirm.

Defendant was convicted by a jury of first-degree robbery, N.J.S.A. 2C:15-1(a)(1). The court sentenced defendant to thirteen years in prison, subject to the eighty-five percent parole ineligibility period required by the No Early Release Act, N.J.S.A. 2C:43-7.2.

The facts giving rise to defendant's conviction are summarized in our published opinion affirming his conviction and sentence, and need not be repeated here. See State v. Faucette, 439 N.J. Super. 241, 250-53 (App. Div. 2015). In his appeal, defendant argued, among other issues, that statements he made to the police should have been suppressed because his Miranda¹ rights were violated and that his sentence was excessive. Id. at 250-51. We rejected those arguments and affirmed his conviction and sentence. Id. at 273. The Supreme Court denied defendant's petition for certification. State v. Faucette, 221 N.J. 492 (2015).

Defendant filed a PCR petition on November 2, 2015, in which he argued, without specificity, that he received the ineffective

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

assistance of counsel and an illegal sentence. A brief and amended petition were submitted on behalf of defendant in August 2016. In this brief, defendant stated that he received the ineffective assistance of appellate counsel who failed to "raise on direct appeal the trial court's application of aggravating factor three."² In addition, he contended that both trial and appellate counsel were ineffective because they failed "to raise meritorious issues regarding the Miranda hearing."

Judge Christopher J. Garrenger denied defendant's petition by an order dated January 18, 2017, which was supported by a thirteen-page written decision of the same date. In the decision, the judge addressed defendant's contention about appellate counsel not raising the sentencing court's application of aggravating factor three, reviewed the contents of defendant's appellate brief and was satisfied that, contrary to defendant's argument, appellate counsel addressed the court's application of the aggravating factor. Moreover, because the issue was raised on appeal and addressed in our opinion, the judge concluded that Rule

² See N.J.S.A. 2C:44-1(a)(3).

3:22-5 procedurally barred the issue from being considered again on a PCR petition.³

Turning to defendant's second contention, Judge Garrenger identified the "premise of [defendant's] argument [as being] that law enforcement was required to inform [defendant] that he was a suspect prior to taking him in for questioning[.]" The judge found that Rule 3:22-5 also procedurally barred this argument as defendant's Miranda challenges were raised on appeal. Quoting from State v. McQuaid, 147 N.J. 464, 484 (1997), he found that the argument was "identical or substantially equivalent" to issues raised on appeal. Moreover, he observed that it was without any legal basis and, quoting from our holding in State v. Gaither, 396 N.J. Super. 508, 515 (App. Div. 2007), he concluded defendant did not "have a constitutional right to have appellate counsel raise every non-frivolous issue that defendant requests on appeal." The judge stated:

[Defendant]'s general argument that he was not notified that he was a suspect in the case prior to questioning is insufficient to establish a claim for [PCR]. [Defendant]'s arguments that his Miranda rights [were] violated was brought forth at both the trial and appellate level. In addressing that

³ The Rule states that "[a] prior adjudication upon the merits of any ground for relief is conclusive whether made in the proceedings resulting in the conviction or in any post-conviction proceeding brought pursuant to this rule or prior to the adoption thereof, or in any appeal taken from such proceedings." R. 3:22-5.

particular issue, counsel was afforded leniency to present the argument in a manner that they believed most effectively couched [defendant]'s position. Counsel's discourse on the subject of Miranda rights was adequate and presented a thorough argument to the Appellate Division. [Defendant] has no legal or factual basis to argue there should have been additional Miranda arguments.

Finally, the judge found defendant's excessive or illegal sentencing arguments as presented were not amenable for consideration on PCR and that defendant had also raised "the issue of any excessive sentence during his direct appeal." This appeal followed.

Defendant presents the following issues for our consideration in his appeal.

POINT I

THE PCR COURT ERRED IN DENYING DEFENDANT AN EVIDENTIARY HEARING, DESPITE THE FACT THAT HE DEMONSTRATED A PRIMA FACIE CASE OF INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL.

A. APPELLATE COUNSEL WAS INEFFECTIVE IN FAILING TO ARGUE AGAINST THE TRIAL COURT'S FINDING OF AGGRAVATING FACTOR THREE.

B. TRIAL AND APPELLATE COUNSEL WERE INEFFECTIVE IN FAILING TO RAISE MERITORIOUS OBJECTIONS TO DEFENDANT'S STATEMENTS TO POLICE.

POINT II

THE PCR COURT ERRED WHEN IT DETERMINED THAT THE CLAIMS CONTAINED IN DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF WERE PROCEDURALLY BARRED.

We are not persuaded by any of these arguments and conclude they "are without sufficient merit to warrant discussion in a written opinion[.]" R. 2:11-3(e)(2). We affirm substantially for the reasons expressed by Judge Garrenger in his comprehensive opinion as we agree from our review of the record that defendant's arguments were procedurally barred and, in any event, he failed to make a prima facie showing of ineffectiveness of counsel within the Strickland-Fritz⁴ test and therefore an evidentiary hearing was not warranted. 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

⁴ Strickland v. Washington, 466 U.S. 668, 687 (1984); State v. Fritz, 105 N.J. 42, 49 (1987).