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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-2827-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VINCENT PORRATA, a/k/a  
VICENTE M. PORRATA, and JOSE  
R. ADAMES,

Defendant-Appellant.

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Submitted May 8, 2018 – Decided May 25, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey,  
Law Division, Camden County, Indictment No.  
13-01-0004.

Andaiye Al-Uqdah, attorney for appellant.

Gurbir S. Grewal, Attorney General, attorney  
for respondent (Arielle E. Katz, Deputy  
Attorney General, of counsel and on the  
brief).

PER CURIAM

Defendant Vincent Porrata appeals from his conviction for  
first-degree racketeering, N.J.S.A. 2C:41-2(c) to 2(d), for which

he was sentenced to ten years in prison subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Defendant's appeal focuses on a September 7, 2017 order denying his motion to withdraw his guilty plea. He presents the following point of argument:

THE TRIAL COURT ERRED BY DENYING DEFENDANT'S  
MOTION TO WITHDRAW PLEA AS THE SLATER FACTORS  
WEIGH IN FAVOR OF DEFENDANT.

The trial judge did not abuse his discretion in denying the motion, because defendant did not satisfy the test set forth in State v. Slater, 198 N.J. 145, 150 (2009). Therefore, we affirm.

I

As the result of an extensive investigation of drug trafficking, the State indicted defendant and thirty-five co-defendants. Defendant was indicted in 2013, on charges of first-degree racketeering, N.J.S.A. 2C:41-2(c); second-degree conspiracy, N.J.S.A. 2C:5-2; first-degree possession of a controlled dangerous substance with intent to distribute, N.J.S.A. 2C:35-5(a) to (b); and third-degree money laundering, N.J.S.A. 2C:21-25(a).

The State's evidence against defendant included wiretaps, and observations made during undercover surveillance. Those observations and wiretaps connected defendant with possible drug activity at his girlfriend's residence and while using her car. At the time of his arrest, defendant was a passenger in the

girlfriend's car. A search of the car revealed two zip lock bags of heroin, over \$14,000 in cash, and over \$10,000 in counterfeit United States currency. Law enforcement officers also seized drug paraphernalia and heroin from the girlfriend's home.

Due to his five prior felony convictions, defendant faced a possible life sentence as a persistent offender if convicted of the first-degree charges. Even if he were not given an extended term, defendant faced a potential sentence of forty-five years in prison if convicted of all charges.

On February 10, 2015, defendant entered into a plea agreement under which he would plead guilty to first-degree racketeering, and the State would recommend a ten-year NERA sentence. On the same date, defendant also entered into a separate cooperation agreement, which could have resulted in the State reducing its recommendation to a five-year NERA sentence. At the plea hearing on February 10, 2015, the prosecutor placed on the record that, although the case was on "the trial list," the State was agreeing to the plea deal "to avoid a lengthy trial" involving "hundreds of wiretaps" and "dozens of witnesses."

The trial judge reviewed the plea agreement on the record, and defendant stated that he understood it. In response to questions from the judge, defendant also acknowledged that he had reviewed the case with his attorney, and his attorney had shared

with him "the discovery materials that [counsel] had received from the State."

In his plea allocution, defendant admitted that between March 15, 2011 and May 10, 2012, he was involved in criminal activity "involving the distribution of drugs in amounts . . . over five ounces" and was involved in laundering money. He specifically admitted that the conspiracy involved "over five ounces of heroin and/or cocaine." Defendant also admitted that during that time period, he had conversations with a co-defendant named Gonzalez in which there was "an agreement that drugs would be distributed to [Gonzalez], or that [Gonzalez] would distribute them to [defendant] for purposes of distribution throughout the County of Camden."

As a result of the cooperation agreement, defendant's sentencing was postponed for six months, and he was permitted to remain free on bail. However, he failed to provide the promised cooperation and did not appear for sentencing. After being arrested on a bench warrant on December 13, 2016, and facing a new sentencing hearing, defendant filed a motion to withdraw his guilty plea. The motion was not supported by a certification from defendant or any other legally competent evidence.

In an oral opinion placed on the record after the motion argument, the trial judge, who had also presided at the plea

hearing, concluded that defendant had not satisfied the standards for withdrawing a guilty plea set forth in Slater. See Slater, 198 N.J. at 150. In particular, the judge found that defendant had not asserted a colorable claim of innocence. The judge also found that defendant had admitted his role in the drug distribution enterprise, and his plea to racketeering did not require that he admit physical possession of drugs.

The judge found that defendant signed plea and cooperation agreements that explicitly stated his sentencing exposure, and defendant admitted on the record that he understood the plea agreement. The judge also noted that the plea was the result of a plea bargain, and defendant obtained the benefit of the agreement.

## II

Prior to sentencing, a motion to withdraw a guilty plea may be granted "in the interests of justice." R. 3:9-3(e); Slater, 198 N.J. at 156. In considering the motion, the trial court must consider the following four factors: "(1) whether the defendant has asserted a colorable claim of innocence; (2) the nature and strength of defendant's reasons for withdrawal; (3) the existence of a plea bargain; and (4) whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused." Slater, 198 N.J. at 150. "The State is not required to show

prejudice if a defendant fails to offer proof of other factors in support of the withdrawal of a plea." Id. at 162. We review the trial court's decision of a Slater motion for abuse of discretion. See id. at 156.

After reviewing the record, we find no abuse of the judge's discretion in denying defendant's motion, and we affirm substantially for the reasons the judge stated in his oral opinion. Defendant's appellate contentions are without sufficient merit to warrant further discussion beyond the following comments. R. 2:11-3(e)(2).

We agree with the judge that defendant did not present a colorable claim of innocence. "A colorable claim of innocence is one that rests on 'particular, plausible facts' that, if proven in court, would lead a reasonable factfinder to determine the claim is meritorious." State v. Munroe, 210 N.J. 429, 442 (2012) (citation omitted). Defendant's motion did not present any evidence that would contradict the facts he admitted at the plea hearing. Contrary to defendant's implicit argument on this appeal, his plea allocution set forth an adequate factual basis for his guilty plea to racketeering.

Defendant's claim, that his attorney did not review discovery with him, contradicted his acknowledgement at the plea hearing that the attorney did so. Defendant's motion did not deny that

he was present in the car that contained the drugs and cash. Nor did he attempt to explain away the incriminating recorded phone calls with his co-conspirator. Nor did he deny bringing a bag of drugs to his girlfriend's house, regardless of whether he was present during the actual search. Given defendant's lack of cooperation with the State, his claim that he believed that cooperation would lead to a three-year recommendation from the State is irrelevant.

Lastly, the timing of defendant's motion strongly suggested that he was "attempting to game the system." Id. at 443. Defendant obtained a favorable plea bargain, and remained out of jail after his plea, by agreeing to cooperate with the State. However, he failed to cooperate and failed to show up for sentencing. After avoiding incarceration for almost two years, defendant filed a Slater motion based on bald assertions rather than "specific, credible facts." See State v. McDonald, 211 N.J. 4, 17 (2012).

This record does not demonstrate "an abuse of discretion which renders the [trial] court's decision clearly erroneous." State v. O'Donnell, 435 N.J. Super. 351, 372 (App. Div. 2014).<sup>1</sup>


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<sup>1</sup> Although the issues may overlap, a motion to withdraw a guilty plea under Slater, and a petition for post-conviction relief (PCR) alleging ineffective assistance of counsel with respect to a guilty plea, are reviewed under different standards. See O'Donnell, 435 N.J. Super. at 368-71. Our disposition of this appeal is without

Finally, we note that in his appellate appendix, defendant included a certification dated September 8, 2017. The certification was not presented to the trial court and is not properly part of the appellate record. See R. 2:5-4(a). Nonetheless, even if we consider the certification, it would make no difference to the result of this appeal.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION

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prejudice to defendant's right to file a PCR petition. In so noting, we are not implying that such a petition would have merit.