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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-3330-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JESSE HELMS, a/k/a
JESSE B. HELMS, and
BARNEY HELMS,

Defendant-Appellant.

Submitted May 10, 2018 – Decided May 18, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Camden County, Indictment Nos.
14-04-1221 and 14-04-0989.

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

Mary Eva Colalillo, Camden County Prosecutor,
attorney for respondent (Linda A. Shashoua,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Jesse Helms appeals from the March 16, 2017 Law Division order, which denied his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm.

On April 3, 2014, a grand jury indicted defendant under Indictment No. 14-04-0989 for third-degree burglary, N.J.S.A. 2C:18-2(a)(1). On April 22, 2014, a grand jury indicted defendant under Indictment No. 14-04-1221 for third-degree receiving stolen property, N.J.S.A. 2C:20-7(a); second-degree eluding, N.J.S.A. 2C:29-2(b); and fourth-degree resisting arrest by flight, N.J.S.A. 2C:29-2(a)(2).

At a May 29, 2014 status conference, in defendant's presence the court discussed the two indictments separately. On Indictment No. 14-04-1221, the State offered a six-year term of imprisonment subject to an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2, and three years of parole supervision. On Indictment No. 14-04-0989, the State offered a concurrent four-year term of imprisonment.

Defendant pled guilty to third-degree burglary and second-degree eluding. According to the plea forms, the State agreed to recommend a "cap" of a seven-year term of imprisonment on the eluding count and a concurrent four-year term on the burglary count. Thus, defendant's aggregate sentence would be "capped" at

a seven-year term of imprisonment with no period of parole ineligibility.

At the plea hearing, defendant testified under oath that he reviewed the plea forms with defense counsel, understood and answered each question truthfully, reviewed the answers after they were written, and signed and initialed the forms. The following colloquy occurred:

[THE COURT]: Now Mr. Helms, it's my understanding your attorney and the prosecutor have entered into plea negotiations and they have reached an agreement. My understanding of the agreement is as follows: In exchange for waiving your right to trial as by jury and pleading guilty here today to . . . the third degree crime of burglary . . . and . . . the second degree crime of . . . eluding a police officer that on the day of sentencing . . . the prosecutor will recommend to the court that on the crime of eluding it would be up to the court to decide what the proper sentence would be but the maximum the court could impose would be a seven year sentence [in] New Jersey State Prison.

On the burglary it will be a four year sentence [in] New Jersey State Prison to run concurrent. . . .

Sir, is that the plea agreement as you know it to be?

[DEFENDANT]: Yes.

[THE COURT]: Have there been any other promises or anything offered to you for you to plead guilty here today?

[DEFENDANT]: No.

. . . .

[THE COURT]: Now is everything you've told me today been the truth?

[DEFENDANT]: Yes.

[THE COURT]: Do you have any questions you want to ask . . . your attorney, the prosecutor, or the court concerning this matter?

[DEFENDANT]: No.

[THE COURT]: Is there anything at all you've not understood?

[DEFENDANT]: No.

[THE COURT]: You've understood everything, sir?

[DEFENDANT]: Yes.

At sentencing, the prosecutor reiterated that defendant's sentence would be capped at seven years on the eluding count, and noted this was "at the mid to lower" end of the range for a second-degree crime. Defense counsel asked the court to sentence defendant one degree lower to a four-year term of imprisonment. The court stated, in defendant's presence, that but for the plea agreement, the court could have imposed the maximum sentence of ten years on the eluding count with five years of parole ineligibility based on defendant's extensive prior criminal record and the need to deter. However, the court sentenced defendant in accordance with the plea agreement to a seven-year term of

imprisonment on the eluding count and a concurrent four years on the burglary count.

Defendant appealed his sentence, arguing, in part, that the sentence on the eluding count should have been at the lower end of the second-degree range. We heard the appeal on our Excessive Sentencing Oral Argument calendar and affirmed. State v. Helms, No. A-5695-14 (App. Div. Feb. 9, 2016).

Defendant filed a PCR petition arguing, in part, the defense counsel rendered ineffective assistance by misadvising that he would receive a four-year term of imprisonment on the eluding count.

In a written opinion, Judge Steven J. Polanksy found defendant was not seeking to withdraw his guilty plea, but rather was seeking a four-year term of imprisonment on the eluding count. The judge then found the record belied defendant's argument that defense counsel misadvised him about the sentence. The judge emphasized the State never offered a four-year plea deal, and there was no evidence that defense counsel misinformed defendant about the sentence. The judge concluded defendant failed to establish a prima facie case of ineffective assistance of counsel, and denied the petition without an evidentiary hearing. This appeal followed.

On appeal, defendant raises the following contention:

POINT I

THE PCR COURT ERRED IN DENYING [DEFENDANT'S] CLAIM THAT TRIAL COUNSEL MISINFORMED HIM ABOUT THE SENTENCE HE WOULD RECEIVE AS A RESULT OF HIS GUILTY PLEA WITHOUT AN EVIDENTIARY HEARING[.]

The mere raising of a claim for PCR does not entitle the defendant to an evidentiary hearing. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999). Rather, trial courts should grant evidentiary hearings and make a determination on the merits only if the defendant has presented a prima facie claim of ineffective assistance, material issues of disputed facts lie outside the record, and resolution of the issues necessitates a hearing. R. 3:22-10(b); State v. Porter, 216 N.J. 343, 355 (2013). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. State v. Preciose, 129 N.J. 451, 462 (1992).

To establish a prima facie claim of ineffective assistance of counsel, the

defendant must satisfy two prongs. First, he must demonstrate that counsel made errors "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." An attorney's representation is deficient when it "[falls] below an objective standard of reasonableness."

Second, a defendant "must show that the deficient performance prejudiced the

defense." A defendant will be prejudiced when counsel's errors are sufficiently serious to deny him "a fair trial." The prejudice standard is met if there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." A "reasonable probability" simply means a "probability sufficient to undermine confidence in the outcome" of the proceeding.

[State v. O'Neil, 219 N.J. 598, 611 (2014) (alteration in original) (quoting Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984)).]


"[T]o set aside a guilty plea based on ineffective assistance of counsel, a defendant must show that (i) counsel's assistance was not 'within the range of competence demanded of attorneys in criminal cases'; and (ii) 'that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pled guilty and would have insisted on going to trial.'" State v. Nuñez-Valdéz, 200 N.J. 129, 139 (2009) (second alteration in original) (quoting State v. DiFrisco, 137 N.J. 434, 457 (1994)). We review a judge's decision to deny a PCR petition without an evidentiary hearing for abuse of discretion. See R. 3:22-10; Preciose, 129 N.J. at 462.

We have considered defendant's contention in light of the record and applicable legal principles and conclude it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We discern no abuse of discretion in the denial of

defendant's PCR petition, and affirm substantially for the reasons Judge Polansky expressed in his cogent written opinion. There is no evidence whatsoever that defense counsel misadvised defendant about the sentence on the eluding count.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION