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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-3403-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FRANK SMITH,

Defendant-Appellant.

Submitted May 15, 2018 – Decided May 24, 2018

Before Judges Fisher and Natali.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
06-04-0818.

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

Dennis Calo, Acting Bergen County Prosecutor,
attorney for respondent (Justin Blasi, Special
Deputy Attorney General/Acting Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

In 2006, defendant was charged with fifteen counts of criminal
offenses, the most serious being first-degree robbery. By motion,

the judge severed the robbery count and another from the remaining thirteen counts, and a jury later convicted defendant of those two severed counts. Defendant then entered into a negotiated plea agreement which resulted in his guilty plea to fourth-degree obstruction of justice, third-degree receiving stolen property, and fourth-degree receiving stolen property. Defendant was sentenced to a life term, subject to an eighty-five percent period of parole ineligibility, on the first-degree robbery conviction, and lesser concurrent terms on the other convictions; the remaining charges were dismissed.

Defendant appealed. We affirmed his convictions but remanded for resentencing, State v. Smith, No. A-2955-07 (App. Div. Oct. 22, 2013), and the Supreme Court denied defendant's petition for certification, 217 N.J. 588 (2014). In complying with our mandate, the trial judge resentenced defendant and again imposed a life sentence on the first-degree robbery conviction. Defendant appealed again, and we affirmed. State v. Smith, No. A-0320-14 (App. Div. Feb. 10, 2015).

On October 19, 2015, defendant filed a post-conviction relief (PCR) petition; in an additional August 2, 2016 submission, defendant amplified on his PCR petition. By way of both submissions, defendant asserted that: (a) his trial attorney was ineffective because of a "lack of diligence and failure to properly

investigate, call witnesses and prepare for the hearing, . . . caus[ing] irreparable damage to [his] suppression hearing"; (b) his trial attorney's "failure to object to the severance . . . put defendant in a situation that was . . . extremely prejudicial"; (c) his trial attorney "was ineffective for not challenging testimony that was previously sworn to in [the] suppression [h]earing and contradicted at trial"; (d) appellate counsel was "ineffective for failing to raise multiple points that would have assisted the defendant in having his conviction reversed"; (e) his trial attorney was ineffective "in failing to object to the prosecutor's summation [that] repeatedly referenced [his] prior convictions and in failing to object to the . . . repeated[] referenc[es] [to his ten] prior convictions during . . . cross-examination"; (f) the trial court granted severance without "consent" or without "notifying [his] attorney"; (g) he was prejudiced by severance because "the jury was unable to hear [his] codefendant[s'] confessions [to] the robbery" and he was "not part of the robbery" but "simply used a credit card that [his codefendants] stole"; (h) the search of his vehicle was without a warrant and unlawful; (i) his trial attorney was ineffective for "fail[ing] to object when the State showed the gun used in the robbery to the jury"; and (j) "[a]side from the severance issue,

[his] appellate attorney . . . failed to raise these issues on appeal." The PCR petition was denied.

Defendant appeals, arguing, in a single point:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO INVESTIGATE AND SPEAK TO WITNESSES; IN THE ALTERNATIVE, THIS MATTER MUST BE REMANDED FOR FINDING OF FACT AND CONCLUSIONS OF LAW (Partially Raised But Not Addressed Below).

We find insufficient merit in this argument to warrant discussion in a written opinion, R. 2:11-3(e)(2), and we affirm substantially for the reasons set forth by Judge Edward A. Jerejian in his thorough and well-reasoned December 19, 2016 oral opinion. We add only a few brief comments.

In his appellate submissions, defendant has presented a dissertation on the applicable legal principles but he has not presented a fact-based argument or any specified reason that would require an evidentiary hearing. Defendant claims only that PCR trial counsel "asserted that defendant's 'trial attorney was ineffective for failing to investigate his case and speak with witnesses,'" and the judge failed to address this contention. We disagree. Judge Jerejian accurately observed that defendant failed to present a prima facie case of ineffectiveness that would require development or resolution at an evidentiary hearing; instead, as

the judge correctly recognized, defendant presented only "b[a]ld assertions." Even now, defendant argues only that his trial attorney was ineffective in failing to "investigate" or "speak with witnesses"; he has not asserted or even suggested what such an investigation would reveal, and he has not identified the witnesses with whom his trial counsel should have spoken. Judge Jerejian properly rejected defendant's claimed entitlement to an evidentiary hearing because defendant failed to specify trial counsel's alleged omissions. See State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999) (holding that a PCR petitioner claiming inadequate investigation "must assert the facts that an investigation would have revealed" and "do more than make bald assertions" of ineffectiveness); see also State v. Porter, 216 N.J. 343, 355 (2013).

Affirmed.

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


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