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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-3691-16T2**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VICTOR ALVARADO,

Defendant-Appellant.

Submitted October 17, 2018 – Decided October 31, 2018

Before Judges Nugent and Reisner

On appeal from Superior Court of New Jersey, Law Division, Union County, Accusation Nos. 15-01-0062 and No. 15-01-0063.

Joseph E. Krakora, Public Defender, attorney for appellant (Abby P. Schwartz, Designated Counsel, on the brief).

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

PER CURIAM

Defendant Victor Alvarado appeals from a January 23, 2017 order denying his petition for post-conviction relief (PCR). We affirm.

Defendant pled guilty to third-degree possession of heroin with intent to distribute in a school zone, N.J.S.A. 2C:35-7, for which an extended term was mandatory due to his prior criminal record. He also pled guilty to third-degree possession with intent to distribute, N.J.S.A. 2C:35-5(b)(3). Consistent with the plea agreement, Judge Regina C. Caulfield sentenced defendant to six years in prison with a three-year parole bar, and a concurrent term of five years with a two and one-half year parole bar. We affirmed the sentence on an Excessive Sentence calendar. State v. Alvarado, No. A-005128-14 (App. Div. Dec. 15, 2015).

Defendant then filed a PCR petition, seeking to re-argue the sentence, and contending that his trial and appellate attorneys were ineffective in failing to argue additional mitigating factors. In a lengthy oral opinion, Judge Caulfield carefully addressed the merits of defendant's arguments, even though they were likely barred because they were or could have been raised on direct appeal. See R. 3:22-4; R. 3:22-5. Notably, the judge found that none of defendant's asserted mitigating factors were supported by the record, and defense counsel was not ineffective in failing to assert non-meritorious arguments. Judge Caulfield also

found that, even if she accepted and considered all of defendant's current sentencing arguments, she would impose the same sentence due to the preponderance of aggravating factors.

On this appeal, defendant raises one point of argument:

DUE TO INEFFECTIVE ASSISTANCE OF
COUNSEL, DEFENDANT RECEIVED AN
IMPROPER SENTENCE, IN VIOLATION OF HIS
RIGHT TO COUNSEL AND A FAIR TRIAL.

After reviewing the record, we conclude that Judge Caulfield thoroughly addressed defendant's contentions, and the arguments are without sufficient merit to warrant further discussion here. R. 2:11-3(e)(2). We affirm for the reasons stated in Judge Caulfield's opinion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION