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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5156-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EVERETT HOLLOWAY,

Defendant-Appellant.

Submitted March 21, 2018 — Decided April 16, 2018

Before Judges Alvarez and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Ocean County, Indictment No. 07-
12-2004.

Joseph E. Krakora, Public Defender, attorney
for appellant (Louis H. Miron, Designated
Counsel, on the brief).

Joseph D. Coronato, Ocean County Prosecutor,
attorney for respondent (Samuel Marzarella,
Chief Appellate Attorney, of counsel; Shiraz
Imran Deen, Assistant Prosecutor, on the
brief).

PER CURIAM

Defendant Everett Holloway appeals from the May 16, 2016
denial of his second petition for post-conviction relief (PCR)

without an evidentiary hearing. After a review of the arguments in light of the record and applicable principles of law, we affirm.

This matter arises from an incident on October 12, 2007, during which defendant brutally, sexually assaulted the victim, E.H. A jury found defendant guilty of two counts of aggravated sexual assault, N.J.S.A. 2C:14-2(a)(7) (count one) and N.J.S.A. 2C:14-2(a)(3) (count two), and three related offenses that were merged when defendant was sentenced on August 6, 2009. The details of defendant's offenses are recounted thoroughly in our opinion affirming defendant's conviction on direct appeal and need not be repeated here. State v. Holloway, No. A-0464-09 (App. Div. September 29, 2011) (Holloway I) (slip op. at 3-9). In his direct appeal, defendant raised the following issues:

I. THE ADMISSION OF HEARSAY STATEMENTS VIOLATED DEFENDANT'S CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESSES AGAINST HIM AT TRIAL.

II. THE EXPERT TESTIMONY INTRODUCED BY THE STATE WAS IMPROPER AND, COMBINED WITH THE INSUFFICIENT JURY INSTRUCTIONS ON THE SUBJECT GIVEN BELOW, CAUSED AN UNFAIR TRIAL.

III. DEFENDANT'S MOTION FOR ACQUITTAL SHOULD HAVE BEEN GRANTED.

IV. THE PROSECUTOR EXCEEDED FAIR COMMENT AND DEPRIVED DEFENDANT OF A FAIR TRIAL.

V. DEFENDANT'S RIGHT TO A FAIR AND IMPARTIAL JURY WAS VIOLATED.

VI. REMAND SHOULD BE ORDERED SO DEFENDANT CAN HAVE AN OPPORTUNITY TO PRESENT HIS CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL NOTED BELOW.

VII. DEFENDANT'S SENTENCE IS IMPROPER AND EXCESSIVE.

Although we rejected the claims advanced in Points I through IV and affirmed defendant's conviction, we deferred consideration of Point VI for PCR. We remanded the issues surrounding Point VII for resentencing because we determined the trial court erred by imposing two extended term sentences contrary to N.J.S.A. 2C:44-5(a)(2), which provides that "[n]ot more than one sentence for an extended term shall be imposed." The Supreme Court denied defendant's petition for certification. State v. Holloway, 210 N.J. 109 (2012). On remand, the trial court resentenced defendant on the second count of aggravated sexual assault to a twenty-year custodial term, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to run concurrently with the life sentence the trial court had previously imposed on the first count of aggravated sexual assault.

On March 1, 2012, defendant filed his first PCR petition. Counsel was appointed to represent him. In the petition, he alleged trial counsel was ineffective for the following reasons: (1) trial counsel failed to provide defendant with discovery and review it with him, which was exacerbated because defendant is

blind; (2) trial counsel failed to investigate and locate witnesses who would have testified defendant and the victim had a prior sexual relationship; and (3) trial counsel's cumulative errors deprived defendant of effective assistance of counsel. In an oral decision delivered from the bench on January 4, 2013, Judge Joseph L. Foster denied defendant's petition without an evidentiary hearing. Defendant appealed, raising the following argument:

THIS MATTER MUST BE REMANDED FOR AN EVIDENTIARY HEARING BECAUSE DEFENDANT ESTABLISHED A PRIMA FACIE CASE OF TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO PROVIDE HIM WITH DISCOVERY AND FAILING TO INVESTIGATE PROSPECTIVE WITNESSES.

We affirmed substantially for the reasons explained by Judge Foster in his oral decision, finding defendant's arguments to be without sufficient merit to warrant discussion in a written opinion. State v. Holloway, No. A-2700-12 (App. Div. April 119, 2014) (slip op. at 3) (Holloway II) (citing R. 2:11-3(e)(2)). The Supreme Court denied defendant's petition for certification. State v. Holloway, 220 N.J. 40 (2014).

On August 26, 2013, defendant filed his second petition for PCR. Pursuant to Rule 3:22-3, the matter was stayed pending the outcome of the first PCR. The second PCR was reinstated following the denial of the first PCR. Counsel was appointed to represent defendant and filed an amended petition and a supporting

certification of defendant. The amended petition raised the following issues:

[I.] The State of New Jersey deprived Petitioner of his Due Process right to a fair trial, pursuant to the Fifth and Fourteenth Amendments to the United States Constitution because Petitioner is a disabled blind person and the State failed to provide him with (a) the necessary equipment to read the discovery or a Social Worker to read the discovery to him; (b) the necessary equipment to communicate with his attorney; and (c) the equipment to listen to the audio tapes of his statement and the statements of the State witnesses.

[II.] Petitioner was deprived effective assistance of trial counsel in violation of the Sixth Amendment to the United States Constitution and N.J. Const. (1947), Art. I, par. 10. Petitioner alleges that trial counsel was ineffective as follows:

A. Petitioner's right to Due Process was violated because defense counsel failed to provide discovery to Petitioner; failed to read all discovery to Petitioner; failed to review the numerous audio tape statements of witnesses with Petitioner; failed to review Petitioner's recorded statements given to the police with Petitioner; failed to investigate Petitioner's defense; and failed to consult with Petitioner to discuss a defense strategy.

B. Failed to object to the admission of hearsay testimony from [Nurse] Valarie Johnson-Green, a State expert witness who had treated the victim, who provided testimony that the victim told her that Petitioner committed the offense along with details of the offense;

C. Failed to request appropriate limiting jury instruction for how the jury could use hearsay testimony;

D. Failed to request a mistrial after it became known that some of the juror's observed a [newspaper] headline that stated, "Rapist on trial" for the crimes which the jury was to deliberate. This allowed the jury to have knowledge that Petitioner had previously been convicted of rape charges.

[III.] Petitioner was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution and N.J. Const. (1947), Art. I, par. [10] because counsel failed to raise the above referenced hearsay issues during petitioner's direct appeal of his conviction.

[IV.] Petitioner was deprived effective assistance of PCR counsel in violation of the Sixth Amendment to the United States Constitution and N.J. Const. (1947), Art. I, par. 10. Petitioner alleges that PCR counsel was ineffective for failing to properly raise the above and below referenced issues.

[V.] Petitioner was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution and N.J. Const. (1947), Art. I, par. [10] because counsel failed to raise the above referenced hearsay and jury issues during petitioner's PCR appeal.

Following oral argument on May 10, 2016, the PCR judge issued an order and comprehensive written decision denying the petition without an evidentiary hearing. As noted by the judge, defendant essentially argues trial counsel was ineffective for failing to:

provide discovery to him and review discovery with him; object to the Johnson-Green's hearsay testimony recounting the victim's statements to her; request a mistrial after jurors discussed a newspaper headline regarding defendant; and obtain sufficient accommodations for defendant's blindness at trial.

With regard to providing reasonable accommodations to defendant's blindness at trial, the trial judge and counsel engaged in the following colloquy during the pretrial conference:

THE COURT: The final issue the [c]ourt would like to address is the extent of your client's vision and any reasonable accommodations to be made. Let me first hear from you, Mr. Smith [defendant's trial counsel], regarding that.

MR. SMITH: Yes, Judge, thank you.

Your Honor, as I understand it, Mr. Holloway is completely blind, not just legally blind, and he is unable to read anything. And regarding that, Judge, several months back in one of my visits to see Mr. Holloway upstairs in the jail, I did review with him and I read through page by page all of the discovery we had at that point.

I did receive today the transcribed statement that Mr. Holloway gave to the police, it's approximately 105, 107 pages in length. I indicated to Mr. Holloway that given the court schedule tomorrow which I understand will break at 12:30, I will spend the afternoon with him upstairs and I will read him that transcript as well and review any other discovery that he wants to go over again before we start the testimony next Tuesday.

Judge, I also spoke with him, one of the concerns was his ability to assist in his defense and I explained to him that during the course of the trial and the testimony, we would [be] unable to speak and I know sometimes clients will write out questions for the defense attorney to respond to with regard to whether the relevant issues are so as to not interrupt the testimony which Mr. Holloway would be unable to do to some extent. However, I think at this point, just from looking at what he brought down with him and discussing with him before your Honor came out on the bench, if he is provided with a note pad and a pen, I have instructed him to during the course of the testimony, if he has an issue or concern with regard to something that's transpiring during the course of the trial, for him to make a note or two, or even a word or two, and then I would at the first available opportunity as needed ask your Honor for a very brief break so I can discuss the issue with him before we proceed, and I think that would work out just fine.

THE COURT: All right. And the [c]ourt will accommodate you once it's brought to the [c]ourt's attention you need time to communicate to your client.

It is my understanding there may be some pictures that may be presented and I understand the State will also give you pictures in order to review and speak with your client in describing those pictures as well.

MR. SMITH: Yes, Judge. In fact, Miss Pierro [the trial prosecutor] was kind enough to provide me already with photos of the anticipated exhibits that will be larger for the jurors to review and the witnesses to review. And what I also indicated to Mr. Holloway is tomorrow afternoon when I see him

upstairs, I will go through with him one by one and explain what the photos depict and that way during the course of the trial when the exhibits are utilized, I will already have explained to him what they are and I can just make reference to that.

THE COURT: Very good. Without telling me what your client brought down, was it writing that you were able to see and is it legible that he communicated to you? I don't know.

MR. SMITH: Yes, it is, Judge. I think he would have difficulty writing out full sentences in a manner where I would be able to address an issue immediately with testimony. However, I think he's able to, I see words he has written and if he's able to do that, I would be able to address any concerns he might have during the course of the trial.

With regard to trial counsel providing discovery to and reviewing discovery with defendant, the judge recounted the following colloquy between the trial judge and counsel before jury selection commenced:

THE COURT: All right. There is another issue the [c]ourt would like to address at this time.

Previously, Mr. Smith, you had indicated and you were instructed to spend some time with your client to review the pictures and describe them in detail. Did you have that opportunity?

MR. SMITH: I did, Judge. Prior to last week, Mr. Holloway and I had reviewed, upstairs, the discovery that I had in my possession last week. We received photographs

that were anticipated to be exhibits in the trial. I did go up to the jail and reviewed. I described what each photograph depicts in anticipation of them being used at the trial.

THE COURT: How much time would you approximate you spent with your client?

MR. SMITH: Last week, with regard to the pictures, it was a little over an hour. It was after court. A little over an hour.

The PCR judge concluded trial counsel made reasonable attempts to provide defendant with discovery given his disability. The judge emphasized Judge Foster had discussed and decided the discovery issue in his ruling denying defendant's first PCR. Specifically, Judge Foster stated:

First of all, with respect to the claim that the defendant was not provided discovery, Mr. Smith represented . . . to Judge Daniels, and there's nothing before this [c]ourt on a competent basis which in any way contradicts Mr. Smith's representations . . . that he received the discovery provided to him prior to trial, that he took the discovery to the defendant while the defendant was incarcerated prior to trial, and reviewed on a line by line basis all the discovery. Defense counsel later represented that he took photographs which were provided to defense counsel during discovery, took them to the jail, sat down with the defendant for an hour and described the contents of those photographs in detail and explained to the defendant how the State would use those photographs Unfortunately, defendant in this matter is blind. I don't know what else defense counsel could have done other than what he did.

The PCR judge further explained:

[Defendant's] argument that discovery should have been translated to Braille or a social worker should have read all discovery to him does not establish that reasonable accommodations were not made. Furthermore, facts underlying the claim that discovery was not appropriately provided unfolded at or before trial. Therefore, they could have been discovered through reasonable diligence by the time of [defendant's] direct appeal, or even by the time of his first PCR petition. Therefore, the claim is also barred under the general bar on subsequent PCR petitions pursuant to [Rule] 3:22-4(b).

The PCR judge further held trial counsel was not ineffective in not requesting a limiting instruction as to Johnson-Green's testimony. In essence, the PCR judge held any failure to object to Johnson-Green's hearsay testimony identifying defendant as the perpetrator was harmless since the testimony of Seaside Heights Police Officer Edward Pasieka included the admissible excited utterance of the victim identifying defendant as the perpetrator, citing N.J.R.E. 803(c)(2). We concluded Pasieka's testimony regarding the victim's identification of defendant as the rapist was admissible under the excited utterance exception to the hearsay rule, N.J.R.E. 803(c)(2). Holloway I, slip op. at 13.

This issue was addressed on the merits on direct appeal. In our opinion we noted the trial court provided a limiting

instruction to the jury before Johnson-Green testified. Id. at

6-7. We then described Johnson-Green's testimony:

Johnson-Green testified that E.H. had a "rug burn" under her chin, her tongue was swollen, she had petechiae (pinpoint broken blood vessels) around her left eye, a reddened area around her neck, a laceration on her left chin and a "dime-sized abrasion" on her left ankle. After Johnson-Green described E.H.'s injuries, the prosecutor asked Johnson-Green whether she had formed an opinion about whether E.H.'s injuries were "consistent with what [E.H.] reported to [her] on that date," to which Johnson-Green answered "[y]es." She responded that the petechiae around E.H.'s left eye, the reddened area around her neck, and her swollen tongue were all "indicative of being strangled and choked until unconsciousness"; the bump on her tongue and the burn under her chin would have been sustained "when [she] passed out and hit the floor;" and "the friction from the rug would cause the rug burn under her chin."

[Id. at 7-8 (alteration in original).]

We concluded the admission of the testimony of Johnson-Green and Rita O'Connor, the State's other expert, was not error, reasoning:

Neither expert offered an opinion that defendant was guilty of sexually assaulting E.H., or that he had engaged in vaginal intercourse with her without her consent. Instead, each one merely commented that E.H.'s injuries were consistent with the type of incident she had described, which had included falling to the floor and sustaining a "rug burn" under her chin, and being choked, thereby sustaining petechiae around her eye. Describing the injuries as "consistent with"

E.H.'s account told the jury nothing more than E.H.'s injuries could be explained by being choked to unconsciousness. So viewed, nothing in the testimony of either expert invaded the province of the jury, but instead assisted the jurors by providing them with "specialized knowledge" to "assist" them in "understand[ing] the evidence or . . . determin[ing] a fact in issue." N.J.R.E. 702. We therefore reject defendant's contention that the testimony of Johnson-Green and O'Connor exceeded the permissible bounds of expert testimony.

[Id. at 17-18 (alteration in original).]

Defendant claimed there were several witnesses who could have testified he was engaged in a consensual relationship with the victim. Defendant did not provide any affidavits or certifications from these witnesses setting forth their testimony had they been called. Nor did he provide addresses or telephone numbers for the alleged witnesses. The PCR judge noted this issue was previously adjudicated in defendant's first PCR. In his oral decision denying defendant's first PCR, Judge Foster stated:

[N]one of those individuals are able to be located, can't be identified, there's no certification or even proffer from the defendant as to what those witnesses would testify to at an evidentiary hearing.

. . . .

The assertions here are nothing more than quite simply bald assertions unsupported by any detail or competent evidence which would suggest that an evidentiary hearing would have

any purpose at all in this matter or alter the outcome in any way.

Defendant further claimed trial counsel was ineffective by failing to request a mistrial after it became known that during the trial two jurors observed a newspaper headline that stated: "Sex Offender Goes On Trial for Raping Neighbor Two Months after Leaving Prison," and "Woman Says She Ran From Rapist Yesterday." Defendant contended this violated his right to due process. The PCR court held this issue was raised and decided against defendant on direct appeal. In our opinion on direct appeal, we stated:

In Point V, defendant argues that his right to a fair trial was violated when the judge failed to excuse two jurors who had seen a newspaper headline in the Asbury Park Press. The record reflects that as a precautionary measure at the beginning of each day's proceedings, the judge inquired of the jurors whether any of them had inadvertently been exposed to any media coverage of the trial. In response to the judge's question, on March 25, 2009, juror number five told the judge that she had seen a headline that morning, but had not read the article. She commented that she had only seen the word "naked." Upon being asked, she assured the judge that seeing a portion of the headline would not impact her ability to be fair and impartial. When the judge asked defense counsel whether he was seeking the excusal of juror number five, defense counsel answered "no." The headline in question apparently read, "Woman Says She Ran From Rapist Yesterday." The record does not explain where the word "naked" was positioned in the headline.

Next, the judge interviewed juror number two, who had seen the same headline. As had juror number five, he told the judge that after seeing the headline, he "stopped," and read nothing else. He also told the judge that nothing about the article or the headline would interfere with his ability to be fair and impartial. Defense counsel did not ask that juror number two be excused.

As a precaution, the judge conducted a voir dire of each of the remaining jurors at sidebar, and although a few had overheard a passing remark in the jury room that there had been an article in the newspaper, none had seen the article and each assured the judge that he or she could be fair and impartial.

Having carefully considered defendant's arguments, we conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(2). Suffice it to say, the judge scrupulously adhered to the procedures for the handling of mid-trial publicity that the Supreme Court developed in State v. Bey, 112 N.J. 45, 86 (1988). We see no basis for reversal, especially in light of the fact that defendant did not request the excusal of any of the jurors.

[Holloway I, slip op. at 24-26.]

The PCR judge concluded trial counsel's performance did not fall below the objective standard of reasonableness required under either prong of the Strickland/Fritz¹ test. With regard to whether the alleged deficiencies in assistance of counsel materially contributed to the outcome of the trial, the judge stated:

¹ Strickland v. Washington, 466 U.S. 668 (1984); State v. Fritz, 105 N.J. 42 (1987).

Merely stating that the alleged deficiencies in assistance of counsel would have materially contributed to the outcome in the matter, instead of displaying how it could have done so, is a "bald assertion." In order to establish a prima facie claim, a petitioner must do more than make bald assertions that he was denied effective assistance of counsel.

Viewing the facts in a light most favorable to defendant, the judge found defendant failed to demonstrate the jury would have reached a different verdict had the discovery been provided to him in the manner he claims it should have. The judge held defendant's arguments did not warrant an evidentiary hearing.

This appeal followed. Defendant raises the following issues:

POINT I

THE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DEPRIVED HOLLOWAY OF A FAIR TRIAL AND RENDERED THE JURY'S VERDICT AS FUNDAMENTALLY UNRELIABLE.

POINT II

HOLLOWAY WAS DEPRIVED OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL BECAUSE HE WAS NOT PROVIDED WITH THE REQUISITE EQUIPMENT TO PARTICIPATE MEANINGFULLY IN THE INVESTIGATION, PRE-TRIAL PREPARATION AND ACTUAL TRIAL AND HOLLOWAY WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL INsofar AS COUNSEL FAILED TO ENSURE THAT THE COURT REASONABLY ACCOMMODATED HOLLOWAY'S VISUAL IMPAIRMENT DISABILITY.

POINT III

TRIAL COUNSEL'S ERRORS, CONSIDERED CUMULATIVELY, AMOUNTED TO THE INEFFECTIVE ASSISTANCE OF COUNSEL FOR HOLLOWAY.

POINT IV

THE PCR COURT SHOULD HAVE CONDUCTED AN EVIDENTIARY HEARING TO ADDRESS ALL OF HOLLOWAY'S CLAIMS.

The standard for determining whether counsel's performance was ineffective for purposes of the Sixth Amendment was formulated in Strickland and adopted by our Supreme Court in Fritz. In order to prevail on a claim of ineffective assistance of counsel, defendant must meet a two-prong test, establishing both that: (1) counsel's performance was deficient and he or she made errors that were so egregious that counsel was not functioning effectively as guaranteed by the Sixth Amendment to the United States Constitution; and (2) the defect in performance prejudiced defendant's rights to a fair trial such that there exists a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

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 only if the defendant meets the following requirements:

(b) A defendant shall be entitled to an evidentiary hearing only upon the establishment of a prima facie case in support of post-conviction relief, a determination by the court that there are material issues of disputed fact that cannot be resolved by reference to the existing record, and a determination that an evidentiary hearing is necessary to resolve the claims for relief. To establish a prima facie case, defendant must demonstrate a reasonable likelihood that his or her claim, viewing the facts alleged in the light most favorable to the defendant, will ultimately succeed on the merits.

(c) Any factual assertion that provides the predicate for a claim of relief must be made by an affidavit or certification pursuant to Rule 1:4-4 and based on personal knowledge of the declarant before the court may grant an evidentiary hearing.

[R. 3:22-10(b) and (c).]

"Rule 3:22-10 recognizes judicial discretion to conduct such hearings." State v. Preciose, 129 N.J. 451, 462 (1992) (citations omitted).

"[I]n order to establish a prima facie claim, a petitioner must do more than make bald assertions that he was denied effective assistance of counsel." Cummings, 321 N.J. Super. at 170. "[R]ather, the defendant must allege facts sufficient to demonstrate counsel's alleged substandard performance." State v. Jones, 219 N.J. 298, 312 (2014) (citations omitted) (quoting State

v. Porter, 216 N.J. 343, 355 (2013)). Where a "court perceives that holding an evidentiary hearing will not aid the court's analysis of whether the defendant is entitled to post-conviction relief or that the defendant's allegations are too vague, conclusory, or speculative to warrant an evidentiary hearing, then an evidentiary hearing need not be granted." State v. Marshall, 148 N.J. 89, 158 (1997) (citations omitted); see R. 3:22-10(e)(1)-(2).

"[A] prior adjudication on the merits ordinarily constitutes a procedural bar to the reassertion of the same ground as a basis for post-conviction review." Preciose, 129 N.J. at 476 (citing R. 3:22-12; State v. Mitchell, 126 N.J. 565, 575-83 (1992)). Additionally, a defendant is precluded from raising an issue on PCR that could have been raised on direct appeal. State v. McQuaid, 147 N.J. 464, 483 (1997). As explained by the Court in McQuaid:

A defendant ordinarily must pursue relief by direct appeal, see R. 3:22-3, and may not use post-conviction relief to assert a new claim that could have been raised on direct appeal. See R. 3:22-4. Additionally, a defendant may not use a petition for post-conviction relief as an opportunity to relitigate a claim already decided on the merits. See R. 3:22-5.

[Ibid.]

The application of these standards require the "[p]reclusion of consideration of an argument presented in post-conviction relief proceedings . . . if the issue raised is identical or substantially equivalent to that adjudicated previously on direct appeal." State v. Marshall, 173 N.J. 343, 351 (2002) (quoting Marshall, 148 N.J. at 150)). The same principle applies to issues decided on the merits in a prior PCR proceeding. A PCR claim is based upon the "same ground" as a claim already raised by direct appeal when "the issue is identical or substantially equivalent" to the issue previously adjudicated on the merits. McQuaid, 147 N.J. at 484 (quoting Picard v. Connor, 404 U.S. 270, 276-77 (1971)).

We review the denial of a PCR petition without an evidentiary hearing for abuse of discretion. State v. Peoples, 446 N.J. Super. 245, 255 (App. Div. 2016) (citing Preciose, 129 N.J. at 462). We discern no such abuse of discretion by the PCR court.

We are satisfied that the PCR court's conclusions are well supported by the record. We, therefore, affirm the denial of the PCR petition substantially for the reasons expressed in the PCR judge's well-reasoned written decision. We add only the following comments.

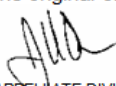
Defendant raises several issues that were decided on the merits on direct appeal or in his first PCR. The PCR judge

properly held that defendant is procedurally barred from re-raising those issues in this second PCR. R. 3:22-5; McQuaid, 147 N.J. at 484; Preciose, 129 N.J. at 476.

The trial court properly rejected defendant's unsupported claim that trial counsel was ineffective for failing to investigate and call as witnesses several individuals who would testify defendant had been engaged in a consensual relationship with the victim. Defendant did not submit any affidavits or certifications of those witnesses verifying what they would have testified to at trial. Nor has defendant demonstrated that he provided trial counsel with sufficient contact information to pursue interviewing those alleged witnesses. Consequently, the allegations amount to no more than bald assertions.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION