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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2244-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALLAN MATTOCKS, a/k/a  
ALLAN D. MATTOCKS,  
ALLEN MATTOCK, and  
ALLEN MATTOCKS,

Defendant-Appellant.

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Submitted May 2, 2022 – Decided May 24, 2022

Before Judges Sabatino, Natali, and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law  
Division, Camden County, Indictment No. 15-06-1698.

Joseph E. Krakora, Public Defender, attorney for  
appellant (Andrew R. Burroughs, Designated Counsel,  
on the brief).

Grace C. MacAulay, Camden County Prosecutor,  
attorney for respondent (Rachel M. Lamb, Assistant  
Prosecutor, of counsel and on the brief).

## PER CURIAM

Defendant Allan Mattocks appeals from a February 25, 2021 Law Division order that denied his petition seeking post-conviction relief ("PCR") without an evidentiary hearing. We reject all but one of defendant's challenges to the February 25th order essentially for the reasons expressed in the PCR judge's oral decision. We remand, however, on a single, discrete issue related to trial counsel's decision not to call a potential defense witness as the record on that point requires additional amplification and a further ruling by the trial court.

### I.

The procedural history and trial evidence are detailed in our unpublished decision opinion affirming defendant's conviction and sentence on direct appeal, State v. Mattocks, A-4341-15 (App. Div. Apr. 12, 2018), certif. denied, 236 N.J. 31 (2018), and in the PCR judge's oral opinion on February 25, 2021. A brief summary will suffice.

On the evening of April 10, 2012, defendant violently assaulted and beat the victim, S.B.W.,<sup>1</sup> under the belief that she stole his trash cans. S.B.W. later reported the incident to the Camden County Police Department. In a recorded statement taken by Camden County Police Detective John Waida, S.B.W. stated

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<sup>1</sup> We refer to the victim by her initials in order to protect her identity.

that defendant threw her down his basement steps and punched her several times. Detective Waida observed her injuries and photographed bruises on her face.

Defendant was later arrested and charged in connection with the assault. Approximately one year later, in an alleged attempt to silence her, defendant encountered S.B.W. on the street and, with the assistance of accomplices Joshua Sloan and Jonathan Kearney, drove her to an abandoned lot and shot her in the head.

Defendant was tried by a jury in 2016 under a superseding sixteen-count indictment, charging him with, among other offenses, attempted murder, kidnapping and various weapons charges.<sup>2</sup> Sloan pled guilty to conspiracy to commit aggravated assault in connection with the shooting and agreed to testify against defendant as part of a cooperation agreement.

Prior to trial, the State offered defendant a plea deal of forty years with an 85% period of parole ineligibility. Trial counsel sent defendant a letter on March 7, 2014 informing him of the State's offer, but defendant claims his counsel failed to discuss the offer with him. In her letter, counsel advised defendant there "may be room for negotiation, but I believe . . . you may be

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<sup>2</sup> The superseding indictment also charged co-defendant Kearney for his participation in the second attack, but defendant was tried alone.

forced to go to trial. I know that you would plead to something in the second-degree range, but the crime itself is very serious." Counsel also attached a March 7, 2014 letter from the prosecutor setting forth the details of the State's forty-year offer, which also included a condition that defendant provide "truthful factual statements concerning the actions of his co-defendants and agree to testify at trial if necessary."

Counsel sent defendant another letter on July 15, 2015, enclosing discovery and informing him that the State intended to try all charges against defendant in a single trial, but noted that she had filed a motion to sever the charges related to the 2012 assault and the 2013 shooting. She further informed defendant:

I know that you do not want to plead guilty to the charges[,] but I will tell you first if you are found guilty of the charges you will be in prison for life. The State is willing to offer you something in the range of [thirty] years with an 85% [parole] disqualifier. I know that this sounds like a lot of time and that you have thus, so far, rejected such an offer. However, given the fact that both [the 2012 and 2013 offenses] will be tried together and that it becomes very difficult to defend, I want you to consider a possibility of a plea. Reviewing the evidence leads me to the conclusion that there is a significant likelihood that you will be convicted of most of these charges. Therefore, I am recommending that you accept the State's offer, if actually [thirty] years.

On July 27, 2015, all parties, including defendant, appeared at a hearing where the State informed the court that the plea offer was thirty-five years with an 85% parole disqualifier. On September 11, 2015, the court held a pretrial conference to address defendant's severance motion. At that proceeding, which defendant and co-defendant Kearney attended, the court denied defendant's application and reviewed the State's plea offer with defendant, as reflected by the following colloquy:

THE COURT: What is the final plea offer in this matter?

[THE PROSECUTOR]: [Forty] years, Your Honor, 85 percent without parole.

THE COURT: All right. And, Mr. Mattocks, you understand if you go to trial and you are convicted, you face the possibility of 180 years incarceration, do you understand that, sir?

[DEFENDANT]: Yes, I do.

THE COURT: Do you understand after today, meaning the plea, we're not going to have any additional plea negotiations. The matter will be resolved by a jury who hears the evidence. Do you understand that, sir?

[DEFENDANT]: Yes.

THE COURT: Do you understand, sir, that if you do make bail and you do not appear, the case can be tried in your absence and you'd be bound by any jury verdict. If you're not here on the trial date and we can't proceed

to trial that day, then it's given a new date. You're not going to know about that new date also. Do you understand that, sir?

[DEFENDANT]: Yes.

Defendant rejected the State's plea offer and, as noted, chose to proceed to trial. At trial, Sloan testified that defendant picked him up with Kearney on the evening of April 12, 2013. Defendant, Kearney, and Sloan drove around "for a couple hours" and eventually stopped when defendant exited the van and "forced" S.B.W. into the vehicle. S.B.W. pleaded for her life in the backseat, as defendant choked her and demanded she shut up, all while interrogating her as to why she had pressed charges.

Kearney then drove the car to an abandoned lot where defendant dragged S.B.W. out of the van by her legs and shot her in the head. At that point, Kearney moved to the passenger seat and defendant drove the van to a wooded area near an apartment building. There, defendant, Sloan and Kearney removed the mats from the van, put them into trash bags with defendant's clothing, and set fire to the bags in an attempt to destroy any evidence.

Sharon Busan, Kearney's mother, also testified for the State. She stated that on April 12th, she was living at her mother's house on Rand Street, two houses away from the abandoned lot where defendant shot S.B.W. That night,

Busan recalled seeing defendant, Kearney and Sloan sitting in defendant's van parked in front of her mother's house while she was sitting outside on the steps. After the van pulled away, Busan stated that she went back inside to put her daughter to sleep when she heard what sounded like a "firecracker" in her backyard.

Busan further testified that she saw defendant's van parked on Rand Street at approximately 9:00 p.m., but in an earlier statement to police, she estimated it was approximately 9:30 p.m. When pressed on cross-examination, Busan estimated it was about 9:45 p.m. when she heard the gunshot, because she remembered that it was partially light out when she initially noticed defendant parked in the van. About a week later, at a family wedding, Busan testified that defendant told her to "keep her mouth shut," and that she "knew what he was talking about."

Elmis Mateo, a nearby Camden resident, also testified as a witness for the State. He was walking his dog the night of the shooting, and he observed a "grey or silver van" parked on Rand Street near the abandoned lot. Mateo testified that he heard a gunshot, saw the van drive away, and walked to the back of the abandoned house where he heard the shot originate. He approached and found S.B.W. lying on the ground with a wound to her head, so he called 9-1-1 and

provided a statement to the police. S.B.W. survived the shooting, but was gravely injured. She has been a patient at a long-term care facility since, and her condition has not improved.

Defendant testified and also presented several witnesses, including his long-term girlfriend, who stated that defendant was home with her during both incidents. Defendant denied assaulting S.B.W. on April 10, 2012, and confirmed that he was in his home with his girlfriend, his children, and a few friends, and neither saw S.B.W., nor accused her of taking his trash cans that day. He also denied kidnapping and shooting S.B.W. one year later, testifying that he was again home with his family cooking, but he never left the house after he finished running errands at about 8:00 or 8:30 p.m. Defendant denied that he drove the van with anyone else that evening.

The jury found defendant guilty of five separate first-degree crimes: attempted murder, N.J.S.A. 2C:5-1 and 11-3(a)(1); tampering with a witness or informant, N.J.S.A. 2C:28-5(a); kidnapping, N.J.S.A. 2C:13-1(b)(2); conspiracy to commit kidnapping, N.J.S.A. 2C:5-1 and 13-1(b)(2); and conspiracy to commit murder, N.J.S.A. 2C:5-2 and 11-3(a)(1). The jury also found him guilty of second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); second-degree retaliation against a witness or informant, N.J.S.A. 2C:28-5(b);



third-degree criminal restraint, N.J.S.A. 2C:13–2(a); two charges of third-degree aggravated assault, N.J.S.A. 2C:12–1(b)(1) and (7); and fourth-degree aggravated assault, N.J.S.A. 2C:12–1(b)(4).

Defendant was also found guilty of two weapons offenses: second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39–4(a), and second-degree certain persons not to have a weapon, N.J.S.A. 2C:39–7(b). The jury found defendant not guilty of separate kidnapping and aggravated assault charges.

After sentencing defendant to an aggregate custodial term of fifty-eight years, the prosecutor requested the court make the witness-tampering conviction consecutive to the other charges. The court agreed and increased defendant's sentence to an aggregate custodial term of seventy-eight years, adding the sixteen years imposed for the witness-tampering offense, with a parole ineligibility period of approximately forty-one years, as mandated by the No Early Release Act, N.J.S.A. 2C:43-7.2.

Defendant appealed his convictions and sentence. We affirmed his convictions, but remanded for resentencing, and concluded the court failed to provide "adequate reasons for the substantial increase in the aggregate

sentence," after it converted the sixteen-year sentence for witness-tampering from a concurrent to consecutive term. Mattocks, slip op. at 25-26.

Defendant was thereafter resentenced on the witness-tampering charge to a twelve-year custodial term with a six-year period of parole ineligibility. The court ordered the sentence to run consecutively to certain other convictions, resulting in an aggregate seventy-year term of incarceration with forty-seven years of parole ineligibility.

Defendant filed a timely PCR petition alleging his trial counsel was ineffective for several reasons. Defendant initially contended counsel failed to call Ramon Rivera, Busan's brother, as a witness at trial, despite listing him on the defense witness list and issuing him a subpoena. Defendant maintained that Busan told Rivera that she lied to police about defendant, and Rivera's testimony should have been presented to impeach collaterally Busan's credibility as her testimony was central to the State's case.

Defendant also argued that counsel failed to diligently investigate and interview Busan regarding the alleged statement she made to Rivera. In addition, defendant argued counsel did not adequately cross-examine Busan as to the discrepancies between her testimony and her initial statement to police. Defendant also filed a supplemental pro se letter brief on March 12, 2020, in

which he reiterated many of the same arguments in his initial brief, including that counsel "failed to discuss and explain" the State's plea offer to him.<sup>3</sup>

The PCR judge found that defendant's claim of ineffective assistance was timely, and not procedurally barred by Rule 3:22-12(a), but defendant failed to establish a prima facie claim of ineffective assistance under the two-part test detailed in Strickland v. Washington, 466 U.S. 668, 687 (1984),<sup>4</sup> and an evidentiary hearing was therefore not required under State v. Preciose, 129 N.J. 451, 463 (1992). As to defendant's first argument, the judge explained that trial counsel's decision not to call Rivera at trial was clearly a strategic one and defendant further failed to offer "any certification from Rivera or other proof" in support of his assertion that Rivera would have testified that Busan admitted to him that she lied when she provided information to police. The judge also

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<sup>3</sup> Defendant raised a number of additional points in his PCR petition and in his brief before the PCR court, many of which he has not reprised on appeal and which we accordingly conclude are waived. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) ("An issue not briefed on appeal is deemed waived.").

<sup>4</sup> To establish a deprivation of a person's Sixth Amendment right to counsel, a convicted defendant must demonstrate: (1) counsel's performance was deficient, and (2) the deficient performance actually prejudiced the accused's defense. State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the Strickland two-part test in New Jersey).

found that that defendant had not been prejudiced by counsel's failure to call Rivera.

The judge also rejected defendant's claim that counsel failed to properly investigate and cross-examine Busan. The PCR judge noted that trial counsel cross-examined Busan on the discrepancies in her initial statement and defendant offered "no support for his claim that Busan made a statement to Rivera that contradicted her testimony at trial". On the latter point, the judge explained that defendant had not provided any "indication of what Busan said, when she said it, and, importantly, how that information would have affected the outcome of his trial."

The PCR judge also denied defendant's claim of ineffective assistance of counsel based upon counsel's alleged failure to properly discuss the State's plea offer with him. The judge noted that his trial counsel's letters clearly indicated she fully informed defendant of the terms of the proposed plea agreement in a timely manner.

Finally, the judge noted that defendant was informed at a pretrial conference that the State's offer had increased to forty years, with the same 85% parole ineligibility period. The PCR judge concluded that defendant had not demonstrated that "the advice he received from [trial counsel] was so incorrect

or so insufficient that it undermined his ability to make an intelligent decision about whether to accept the plea offer." Rather, the judge found counsel had provided adequate and accurate information to defendant, as reflected in her correspondence to him.

This appeal ensued, in which defendant raises the following arguments, which we have rearranged for purposes of this opinion:

POINT I

AS DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL, HE IS ENTITLED TO POST-CONVICTION RELIEF, OR, IN THE ALTERNATIVE, TO AN EVIDENTIARY HEARING.

[A.] Trial counsel failed to diligently investigate the case and effectively cross-examine Sharon Busan.

[B.] Trial counsel failed to provide accurate information necessary for defendant to make an informed decision on whether to accept the State's plea offer.

[C.] Trial counsel's cumulative errors denied defendant effective legal representation.

[D.] Trial counsel was ineffective in failing to call Ramon Rivera as a witness.

POINT II

AS DEFENDANT HAS MADE A PRIMA FACIE CASE OF INEFFECTIVE ASSISTANCE OF

COUNSEL AND THERE WERE GENUINE ISSUES OF MATERIAL FACT IN DISPUTE, THE PCR COURT ERRED WHEN IT DENIED THE PETITION WITHOUT AN EVIDENTIARY HEARING.

Having considered these arguments in light of the record and applicable law, we affirm the dismissal of defendant's PCR petition with respect to the issues raised in Point I. A – C. We remand for the court to address in the first instance defendant's Strickland-related arguments raised in Point I.D, in light of defendant's submission of a certification of Ramon Rivera that he failed to provide to the PCR court.

II.

Under the Sixth Amendment of the United States Constitution, a person accused of crimes is guaranteed the effective assistance of legal counsel in his defense. Strickland, 466 U.S. at 687. When reviewing claims that a defendant's counsel's performance was constitutionally deficient, courts apply a strong presumption that defense counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690.

In Point I.A., defendant argues his trial counsel provided ineffective assistance because she failed to properly investigate and cross examine Sharon Busan. He maintains that trial counsel "had been provided with Busan's

statement in discovery" and failed to "have an investigator interview Busan prior to trial regarding the untruth of this anticipated testimony." As such, defendant contends "trial counsel's failure to adequately challenge a crucial State witness deprived defendant of effective legal representation." We disagree.

In rejecting this argument, the PCR judge relied on State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999), and explained that a defendant making such a claim must "assert facts that an investigation would have revealed, supported by affidavits or certification based upon the personal knowledge of the affiant or the person making the certification." The PCR judge noted that defendant failed to provide any such explanation or evidentiary support to suggest how a further investigation of Busan would have affected the outcome at trial. The court also concluded that defendant's contention ignored trial counsel's cross-examination of Busan with respect to discrepancies between her trial testimony and her initial statement, and that Busan conceded that her memory was likely better at the time she gave the statement to police.

As noted, trial counsel's informed strategic decisions demand our heightened deference, and "are virtually unchallengeable." Strickland, 466 U.S. at 690-91. "[C]omplaints 'merely of matters of trial strategy' will not serve to ground a constitutional claim of inadequacy of representation." Fritz, 105 N.J.

at 54 (quoting State v. Williams, 39 N.J. 471, 489 (1963)). For example, in State v. Marshall, 148 N.J. 89, 166 (1997), our Supreme Court denied the defendant's PCR petition alleging that counsel failed to adequately cross-examine a prosecution witness concerning his prior statement to investigators, concluding that counsel had sufficiently questioned the witness to make the jury aware of the circumstances surrounding the statement.

Here, defendant's trial counsel similarly cross-examined Busan about the inconsistencies in her prior statement to police and her testimony at trial. Counsel further pressed Busan on why she never told police about the incident at the family wedding when defendant approached her, whether she had been drinking on the night of April 12, 2013, and her previous encounters with the criminal justice system. Under the circumstances, we agree with the PCR judge that defendant failed to establish that trial counsel's investigation and cross-examination of Busan was constitutionally ineffective under Strickland. In sum, we are satisfied that counsel's cross-examination did not "so undermine[] the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686.



### III.

We also reject defendant's claim that his counsel violated his Sixth Amendment rights because she failed to adequately review with him the State's plea offers. Defendant specifically contends counsel misrepresented the plea offer when she informed him the state extended an offer "in the range of [thirty] years," and when that offer increased to forty years, counsel failed to address the terms with him.

It is well settled that "plea bargaining is a critical stage of the criminal proceeding at which the right of representation attaches." State v. Taccetta, 351 N.J. Super. 196, 200 (App. Div. 2002); see also United States v. Day, 969 F.2d 39, 43 (3d Cir. 1992). During the plea-bargaining stage, "a defendant has the right to make a reasonably informed decision whether to accept a plea offer" and knowledge of potential sentence exposure is crucial to the decision of whether to plead guilty. Day, 969 F.2d at 43; see also State v. Nichols, 71 N.J. 358, 361 (1976); Pressler and Verniero, Current N.J. Court Rules, cmt 1.4.2. on R. 3:9-2 (2011) ("The defendant must be advised of the maximum penalty for the crime to which he is pleading guilty.").

Therefore, counsel's effective assistance at the plea bargain stage, as well as defendant's understanding of the sentencing consequences, is of paramount

importance. See Von Moltke v. Gillies, 332 U.S. 708, 721 (1948) ("Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered."). In the context of plea offers, in order to establish ineffective assistance of counsel, "a defendant must show the outcome of the plea process would have been different with competent advice." Lafler v. Cooper, 566 U.S. 156, 163 (2012).

Here, the PCR judge's conclusion that defendant did not meet the performance prong of the two-part Strickland test based on his counsel's misadvice regarding the State's plea offers. The court concluded that the correspondence between defendant and his trial attorney demonstrated that counsel adequately discussed the plea offers extended by the State, and defendant was aware of the consequences of rejecting them and proceeding to trial. The court further noted that the trial judge had previously reviewed the change to the plea with defendant at the pretrial conference. These conclusions are amply supported by the record.

It is clear from her letters that counsel reviewed the offers with defendant and gave candid warnings as to the consequences of going to trial. As noted, counsel provided defendant with a March 7, 2014 letter from the prosecutor

detailing the forty-year offer with an 85% ineligibility period should defendant plead guilty to counts one and three. The letter explained that this sentence would run consecutively to any other pending sentence defendant faced. Counsel forwarded the letter to defendant that same day and stated her belief that there might be "room for negotiation," but noted the serious nature of the crimes to which defendant was charged.

Counsel thereafter moved to sever the charges and explained to defendant in a July 20, 2015 letter that the consolidation of the counts would be "very damaging to the defense" and advised of the "significant likelihood" of conviction on most of the counts that would likely result in life imprisonment. In this letter, counsel informed defendant that the State was "willing to offer . . . something in the range of [thirty] years with an 85% disqualifier," and recommended he accept this offer "if actually [thirty] years." Defendant has provided no evidence, however, that the State extended a plea offer of thirty years with an 85% parole disqualifier.

It is also clear from the relevant transcripts of the pretrial proceedings that defendant understood the plea offers and was present in court when the thirty-five-year offer was presented, despite maintaining he has "no recollection" of that offer. He further reviewed the State's later offer of forty years with the

motion judge at the September 11, 2015 pretrial conference, where defendant indicated he understood the consequences of proceeding to trial, despite facing a possible 180-year term of incarceration.

As such, defendant has not proved either that his trial counsel grossly misadvised him or that he likely would otherwise have accepted the State's offer. See Taccetta, 351 N.J. Super. at 200. Contrary to defendant's argument, the record establishes he was fully advised of and understood his sentencing exposure, and decided to proceed to trial fully informed and aware of the adverse consequences.

#### IV.

Finally, defendant argues his trial counsel erred when she failed to call Ramon Rivera as a witness. In support, he submits, for first time on appeal, a December 12, 2019 certification from Rivera, in which he attests that Busan falsely testified regarding the events of April 12, 2013. The parties do not dispute that this certification was not presented to the PCR court. In fact, in rejecting this argument, the PCR judge specifically noted that defendant failed to provide any competent evidence regarding these allegations.

Rivera attested in his December 12, 2019 certification that he, Busan, and other family members were drinking in the basement of their parents' apartment

on April 12, 2013, and from that location in the home, there "was no way that [Busan] saw anyone parked in the front of the building between 9:30 p.m. and 10:00 p.m." He further denied that Busan could have heard the gunshot because he heard "a loud pop sound," and asked whether anyone had also heard it, to which Busan allegedly responded, "hear what?" Rivera further certified that he had been served with a subpoena, appeared in court and waited to be called as a trial witness, but defendant's counsel informed him he was "no longer needed" because defendant "did not want [him] to testify anymore."

In rejecting defendant's argument, the PCR judge explained that "[d]etermining which witness to call to the stand at trial is one of the most difficult strategic decisions that any trial attorney must confront." Relying on State v. Arthur, 184 N.J. 307, 320-21 (2005), the judge noted that when making such a strategic decision, a trial attorney must consider the witness's expected testimony, his or her credibility, whether the testimony will be subject to impeachment, and whether the testimony will contradict testimony of other witnesses, among other factors. Without any competent proofs before it regarding Rivera's expected testimony, the judge properly concluded that defendant's "reliance upon the bald assertion that counsel was ineffective for not

calling the [Rivera was] insufficient to prove that trial counsel was deficient or that defendant was prejudiced by the failure to call [him] as a witness."

As noted, defendant has submitted to us a certification from Rivera detailing his proposed testimony and how it would have impeached Busan's testimony. Despite the improper procedure employed in submitting the certification, see Rule 2:5-4(a), we believe the interests of justice warrant a limited remand for the PCR court to make factual findings related to the Rivera certification and what, if any, effect it would have had on the judge's Strickland analysis had it been presented with the document. The judge may wish to inquire of defendant's PCR counsel why the certification likely was not presented to the court inasmuch as it is dated December 12, 2019, over two years before the PCR hearing.

Our remand should in no way be interpreted of a criticism of the PCR court which addressed the matter conscientiously and thoroughly based on the materials before it. We also acknowledge that Rivera's certification confirms the sound of a nearby gunshot on the night of S.B.W.'s death, and on that point his testimony may have supported the State's case.

However, in his certification, Rivera also disputes Busan's testimony that she saw defendant's van parked in front of their family's apartment, and would

have impeached two additional inculpatory witnesses, Sloan and Mateo, who placed defendant's van on Rand Street on the evening of April 12, 2013. In light of these facts, we believe the better course is for the PCR judge to address the issue in the first instance. See Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124, 146 (2022) (Appellate courts should exercise original jurisdiction "'sparingly.'") (quoting State v. Jarbath, 114 N.J. 394, 412 (1989)). Nothing in our opinion should be construed as an expression of our views regarding the merits of defendant's petition based on the Rivera certification.

We leave it to the PCR court to determine the scope of the remand proceedings with respect to the sole issue we have identified that requires additional fact finding, and specifically if an evidentiary hearing would be necessary. With that said, we reject defendant's contention that Preciose, 129 N.J. at 463, required such a hearing with respect to the claims made in Points I. A. - C.

To the extent we have not specifically addressed any of defendant's arguments, it is because we have concluded any such contention was of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed in part and remanded in part. We do not retain jurisdiction.

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

