

**NOT FOR PUBLICATION WITHOUT THE  
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-2251-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CASCHE ALFORD, a/k/a  
CACHE ALFORD,

Defendant-Appellant.

---

Submitted March 2, 2022 – Decided April 25, 2022

Before Judges Hoffman and Geiger.

On appeal from the State of New Jersey, Law Division,  
Camden County, Indictment Nos. 16-07-2163, 16-08-  
2330, and 16-08-2344.

Joseph E. Krakora, Public Defender, attorney for  
appellant (John V. Molitor, Designated Counsel, on the  
brief).

Grace C. MacAulay, Camden County Prosecutor,  
attorney for respondent (Natalie A. Schmid  
Drummond, Assistant Prosecutor, of counsel and on the  
brief).

## PER CURIAM

Defendant appeals from the September 23, 2020 Law Division order denying her petition seeking post-conviction relief (PCR) without an evidentiary hearing. We affirm.

### I.

We glean the following facts from the record. On October 30, 2015, defendant was leaving a corner store in Camden when she encountered Samad Rogers. Upon encountering Rogers, the two began to argue. Defendant pulled out a gun and shot Rogers in the forearm and leg. On December 27, 2015, defendant received a Facebook message from Nathaniel Plummer, Jr., asking if she wanted to rob a taxi. She replied in the affirmative. The two met up later that day in Camden. Defendant and Plummer got into a taxi and Plummer pulled out a gun and pointed it at the driver's head, demanding cash. The driver gave them his money.

On January 7, 2016, eleven days after she and Plummer robbed the taxi driver at gunpoint, defendant confronted Plummer about a screenshot message from another person saying that Plummer was no longer okay with defendant. At some point during the confrontation, defendant pulled out a gun and shot Plummer several times at close range, including two gunshots to his head. At

her plea hearing, defendant admitted that she killed Plummer due to her reckless actions and extreme indifference to Plummer's life, who died from his wounds.

On May 16, 2016, a Camden County grand jury returned three separate indictments against defendant. Indictment No. 16-07-2163 charged defendant with the first-degree murder of Nathaniel Plummer, Jr., N.J.S.A. 2C:11-3(a)(1),(2) (count one), second-degree possession of a weapon for unlawful purpose, N.J.S.A. 2C:39(4)(a) (count two), and second-degree unlawful possession of a weapon, without obtaining a permit to carry a handgun as required by N.J.S.A. 2C:58-4 (count three).

Indictment No. 16-08-2344 charged defendant with first-degree armed robbery of the taxi driver, N.J.S.A. 2C:15-1(a) (count one), second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b), without obtaining a permit to carry a handgun, N.J.S.A. 2C:58-4 (count two), second-degree possession of a weapon for unlawful purpose, N.J.S.A. 2C:39-4(a) (count three), and second-degree conspiracy to commit an armed robbery, N.J.S.A. 2C:5-2 (count four).

Indictment No. 16-08-2330 charged defendant with the first-degree attempted murder of Samad Rogers, N.J.S.A. 2C:5-1 (count one), second-degree aggravated assault of Rogers, N.J.S.A. 2C:12-1(b)(1) (count two), second-

degree possession of a weapon for unlawful purpose, N.J.S.A. 2C:39-4(a) (count three), and second-degree unlawful possession of a weapon, in violation of N.J.S.A. 2C:39(5)(b) without obtaining a permit to carry a handgun as required under N.J.S.A. 2C:58-4 (count four).

At the plea hearing held on November 14, 2016, defendant entered into a negotiated plea agreement that addressed all charges in all three indictments.

Pursuant to the agreement, defendant pled guilty to the following charges:

- 1) First-degree aggravated manslaughter as amended under Count One of Indictment No. 16-07-2163 in exchange for a recommended prison term of thirty years with an eighty-five percent period of parole ineligibility under the No Early Release Act (NERA) N.J.S.A. 2C:43-7.2;
- 2) Second-degree Conspiracy to commit robbery under Count Four of Indictment No. 16-08-2344, in exchange for a recommended prison term of seven years, with an eighty-five percent period of parole ineligibility under NERA;
- 3) Second-degree aggravated assault charge under Indictment No. 16-08-2330, in exchange for a recommended prison term of seven years, with an eighty-five percent period of parole ineligibility under NERA.

The agreement further provided that the three sentences would run concurrently to each other.

Before accepting defendant's plea, the judge engaged in a colloquy with defendant regarding the plea agreement and elicited a factual basis for the charges. The judge found defendant's guilty plea knowing and voluntary and that the factual basis supported the charges. Therefore, he accepted defendant's guilty plea to aggravated manslaughter, conspiracy to commit robbery, and aggravated assault.

On January 13, 2017, the same judge sentenced defendant. The judge applied aggravating factors three (risk of re-offense); six (defendant's prior criminal record); and nine (need to deter). N.J.S.A. 2C:44-1(a)(3), (6), (9). Specifically, the judge applied aggravating factor three – the risk that defendant will commit another offense – because defendant's "crimes of violence, threats of violence, violations of probation" showed that her "contact has been ongoing and significant." The judge applied aggravating factor six – defendant's prior criminal record and the seriousness of offenses – because defendant's prior convictions included "delinquency for aggravated assault, terroristic threats, weapons possession, [and] controlled substance distribution." Finally, the judge applied aggravating factor nine – the need for deterrence. The judge found no mitigating factors applied. Consequently, the judge determined that the aggravating factors outweighed the mitigating factors.

The judge then sentenced defendant to thirty years of imprisonment with an eighty-five percent period of parole ineligibility under NERA on the aggravated manslaughter conviction, seven years imprisonment with an eighty-five percent period of parole ineligibility under NERA on the conspiracy to commit robbery conviction, and seven years imprisonment with an eighty-five percent period of parole ineligibility under NERA on the aggravated assault conviction, all to run concurrently with each other. All other charges under the three indictments were dismissed, consistent with the plea agreement.

Defendant's forty-five-day deadline for filing a notice of appeal of conviction or sentence lapsed without a filing. In August 2017, defendant filed a pro se PCR petition claiming ineffective assistance of counsel and seeking relief to file an appeal. On February 19, 2018, defendant through counsel filed an amended PCR petition, claiming ineffective assistance of counsel resulted in defendant's lapse of the appeal deadline. On May 4, 2018, this court entered a consent order permitting defendant to withdraw her amended PCR petition and file a direct appeal as within time. Defendant's direct appeal was heard on an excessive sentence oral argument calendar on December 3, 2018. At oral argument, defendant's counsel argued that "there should have been some consideration of [defendant's] youth" at sentencing. While defendant's counsel

conceded that defendant's sentence "isn't the equivalent of life without parole," he argued that her youth should have been considered, pursuant to Miller v. Alabama, 567 U.S. 460 (2012). Finally, counsel argued that defendant's "immaturity or fear" in proceedings had been misjudged for lack of remorse. We issued an order that same day affirming defendant's sentence. Specifically, this court was "satisfied that the sentence is not manifestly excessive or unduly punitive and does not constitute an abuse of discretion."

Defendant filed a petition for certification on February 8, 2019, which the Supreme Court denied. State v. Alford, 236 N.J. 608 (2019). Defendant then filed the PCR petition under review on May 7, 2019.

On July 26, 2019, after considering the record, briefs, and arguments of counsel, the PCR court denied defendant's petition. While the State argued that defendant's petition was procedurally barred pursuant to Rule 3:22-5, because the issue of defendant's sentence was previously considered by this court on defendant's direct appeal, the PCR court did not directly address this argument. Instead, the PCR court ruled that defendant's petition failed on the merits.

The PCR court concluded defendant had not established a prima facie case of ineffective assistance of counsel. As to the mitigating factors presented at sentencing, defendant did not provide evidence that the outcome or sentence

would have been affected by asserting arguments regarding mitigating factor four. The PCR court found that "defendant simply fails to make a connection" as to how additional arguments advocating for mitigating factor four would have resulted in any impact on the "already-favorable" sentence.

The PCR court also concluded that defendant provided no evidence that the sentencing judge did not properly appreciate mitigating factor four. The court noted that the sentencing judge stated that he considered all mitigating factors, which would include factor four, and did not find any. The PCR court therefore concluded that the issue of the mitigating factors was considered by the previous courts and thus, if defendant's argument was not procedurally barred, it failed substantively. The PCR court further noted that the sentencing court considered defendant's youth, and that defendant failed to establish that the sentencing judge failed to do so. The PCR court also found that the sentencing transcript indicated that the judge was certainly aware of defendant's age, having referenced her age, and the fact that he ordered that defendant serve her sentence in a juvenile facility until age twenty-five.

In addition, the PCR court noted that this court issued an order following oral argument on the excessive sentence oral argument calendar, concluding that this court was satisfied defendant's sentence was not manifestly excessive or



unduly punitive and did not constitute an abuse of discretion. Accordingly, the PCR court concluded that defendant had not established ineffective assistance of counsel that would justify an evidentiary hearing. For those reasons, the PCR court denied defendant's petition for PCR.

On appeal, defendant raises the following arguments:

POINT I

NONE OF THE DEFENDANT'S CLAIMS ARE  
PROCEDURALLY BARRED.

POINT II

THIS COURT SHOULD REVERSE THE TRIAL  
COURT'S DECISION TO DENY THE  
DEFENDANT'S PETITION FOR POST-  
CONVICTION RELIEF WITHOUT AN  
EVIDENTIARY HEARING.

II.

We begin our analysis by acknowledging the legal principles governing this appeal. Post-conviction relief serves the same function as a federal writ of habeas corpus. State v. Preciose, 129 N.J. 451, 459 (1992). When petitioning for PCR, a defendant must establish by a preponderance of the credible evidence that he or she is entitled to the requested relief. Ibid. (citations omitted). The defendant must allege and articulate specific facts that "provide the court with an adequate basis on which to rest its decision." State v. Mitchell, 126 N.J. 565,

579 (1992).

The United States Supreme Court has declared that certain juvenile sentencing schemes are unconstitutional based on the Eighth Amendment's ban on cruel and unusual punishment. See Roper v. Simmons, 543 U.S. 551, 568-70 (2005) (holding that it is unconstitutional to impose capital punishment for crimes committed while under the age of 18); Graham v. Florida, 560 U.S. 48, 82 (2010) (holding that juvenile offenders cannot be sentenced to life imprisonment without parole for non-homicide offenses); and Miller, 567 U.S. at 489 (holding that mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders).

In 2017, our Supreme Court reviewed the sentencing of minors in New Jersey in State v. Zuber, 227 N.J. 422 (2017). The Court considered whether the principles underlying Miller should apply to sentences that are the "practical equivalent of life without parole." Id. at 428.

The Zuber Court instructed that "the focus at a juvenile's sentencing hearing belongs on the real-time consequences of the aggregate sentence," so "judges must evaluate the Miller factors when they sentence a juvenile to a lengthy period of parole ineligibility for a single offense" and "when they consider a lengthy period of parole ineligibility in a case that involves multiple

offenses." Zuber, 227 N.J. at 447 (emphasis added). The Court thus ruled that sentencing judges should evaluate the Miller factors at that time "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 451 (quoting Miller, 567 U.S. at 480).

The Court recently revisited this issue in State v. Comer/State v. Zarate, 249 N.J. 359 (2022). The Court began its analysis by recognizing:

The law recognizes what we all know from life experience – that children are different from adults. Children lack maturity, can be impetuous, are more susceptible to pressure from others, and often fail to appreciate the long-term consequences of their actions. Miller, [567 U.S. at 477]. They are also more capable of change than adults. Graham [560 U.S. at 68]. Yet we know as well that some juveniles – who commit very serious crimes and show no signs of maturity or rehabilitation over time – should serve lengthy periods of incarceration.

The issue before the Court is how to meld those truths in a way that conforms to the Constitution and contemporary standards of decency. In other words, how to impose lengthy sentences on juveniles that are not only just but that also account for a simple reality: we cannot predict, at a juvenile's young age, whether a person can be rehabilitated and when an individual might be fit to reenter society.

[Ibid.]

In Comer, the defendant committed felony murder while a juvenile, and was sentenced to the mandatory minimum sentence for felony murder under N.J.S.A. 2C:11-3(b)(1), a thirty-year term without the possibility of parole. Id. at 5, 10. James Zarate committed purposeful murder when he was fourteen years old, and was sentenced to life, subject to the eighty-five percent period of parole ineligibility imposed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Id. at 5, 16. He also received consecutive four- and nine-year terms for two other offenses. Id. at 16. Zarate will first be eligible for parole after serving more than forty years. Id. at 5. Zarate was later resentenced to life in prison with no consecutive terms. Id. at 18. On a second remand, Zarate was resentenced to a fifty-year NERA term. Id. at 21. "Zarate will be 56 years old when he is first eligible for parole." Ibid. The Court modified and affirmed his sentence, but "declined to foreclose the possibility that Zarate might one day be able to return to court to show 'that he has sufficiently reformed himself to a degree that' his sentence is 'no longer . . . constitutional under the Eighth Amendment.'" Id. at 21-22 (alteration in original).

The Court explained that to determine whether a sentence is cruel and unusual, an independent analysis under Article I, Paragraph 12 of the New

Jersey Constitution is appropriate. Id. at 25 (citing State v. Ramseur, 106 N.J. 123, 182 (1987)).

The test under [the federal and state] Constitutions is "generally the same": "First, does the punishment for the crime conform with contemporary standards of decency? Second, is the punishment grossly disproportionate to the offense? Third, does the punishment go beyond what is necessary to accomplish any legitimate penological objective?" Zuber, 227 N.J. at 438 (quoting Ramseur, 106 N.J. at 169). If the punishment fails under any one of the three inquiries, "it is invalid." State v. Gerald, 113 N.J. 40, 78 (1988). [Ibid.]

"Although the test is similar under federal and state law, our State Constitution can confer greater protection than the Eighth Amendment affords." Id. at 26.

Defendant argues that the court improperly failed to consider mitigating factor four, requiring the sentencing judge to consider whether "[t]here were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense." See N.J.S.A. 2C:44-1(b)(4). Defendant asserts her youth was a mitigating factor and that, because of her youth, the trial court should have given "little to no weigh[t]" to aggravating factors three (the risk that defendant would re-offend) and nine (the need to deter). We are not persuaded.

Defendant was seventeen years old when she committed two homicides. Defendant shot Rogers on the street after an argument. Soon thereafter, defendant conspired to commit an armed robbery with a thirteen-year-old boy. The pair executed the armed robbery. Shortly after the robbery, defendant killed her co-conspirator by shooting him at close range.

Notwithstanding defendant's youth, these facts demonstrate a strong need for deterrence. Defendant was seventeen years old — less than one year from the age of majority. Furthermore, the record indicates that the sentencing court was fully aware of defendant's youth at the time she committed these crimes. Defendant will be forty-seven years old when her sentence concludes. Because the record demonstrates that the sentencing court considered defendant's youth, along with the gruesome nature of her crimes, and the terms of her very favorable plea agreement, we see no reason to disturb her sentence.

We next turn to defendant's claim that she received ineffective assistance of counsel. To establish a prima facie case of ineffective assistance of counsel, defendant must show: (1) counsel's performance was objectively deficient; and (2) counsel's deficient performance prejudiced defendant to the extent that he was deprived of his right to a fair trial. State v. Fritz, 105 N.J. 42, 58 (1987) (adopting the United States Supreme Court's two-prong test from Strickland v.

Washington, 466 U.S. 668, 687 (1984)). Prejudice means "a reasonable probability" the deficient performance "materially contributed to defendant's conviction." Ibid.

The first prong of Strickland requires that a petitioner show that counsel's performance was deficient as measured by an objective standard of reasonableness. Strickland, 46 U.S. at 687-88. This objective standard is measured according to a standard of reasonable competence, which does not mandate "the best of attorneys but certainly not one so ineffective as to make the idea of a fair trial meaningless." State v. Davis. 116 N.J. 341, 351 (1989).

Moreover, there is a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. Consequently, a petitioner must identify specific acts or omissions of counsel that fall outside reasonable professional judgment. Ibid. The court then decides whether these acts fell "outside the wide range of professional competent assistance." Ibid.

Per Rule 3:22-2(a), "a petition for [PCR] is cognizable if "there was a "[s]ubstantial denial in the conviction proceedings of defendant's rights under the Constitution of the United States or the Constitution or laws of the State of New Jersey . . . ." To be granted PCR, the petitioning defendant must establish

the denial of such a right by a "preponderance of the credible evidence." State v. Preciose, 129 N.J. 451, 459 (1992). "To sustain that burden, specific facts" that "provide the court with an adequate basis on which to rest its decision" must be articulated. State v Mitchell, 126 N.J. 565, 579 (1992).

Rule 3:22-10(b) provides:

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.

Defendant contends that her counsel was deficient and that, but for counsel's deficient performance, the sentencing court would have imposed a lesser sentence. Specifically, defendant argues that her counsel should have urged for the application of mitigating factor four and made arguments regarding of the science that supports imposing a lesser sentence on juvenile offenders.

Addressing the first prong of the Strickland test, defendant was seventeen years old when she shot and killed Rogers over an argument. Defendant then conspired to commit an armed robbery with a thirteen-year-old. The pair committed the armed robbery on a cab driver, and defendant later killed her thirteen-year-old co-conspirator. While impeccable representation may have



included specific arguments based on defendant's youth, this is not the Strickland standard. We find no indication that defendant's counsel's performance fell below an "objective standard of reasonableness." Strickland, 46 U.S. at 687-88. We find no reason to believe that the sentencing court was not aware of the science justifying lesser sentences for juvenile offenders. Accordingly, we conclude that counsel's failure to make arguments regarding this science did not fall below an objective standard of reasonableness.

We find defendant also fails the second Strickland prong. Defendant's crimes were heinous. Indeed, she shot Samad Rogers after a brief argument. Defendant then conspired to commit an armed robbery. After the armed robbery, defendant killed her thirteen-year-old co-conspirator. There is no indication that making the court aware of more science justifying lesser sentences for juveniles would have changed the outcome in this case, considering the gruesome nature of defendant's crimes, defendant's prior criminal record, the need for deterrence in this case, and the very favorable terms of defendant's plea agreement. Because defendant cannot make a prima facie

case for ineffective assistance of counsel, she was not entitled to an evidentiary hearing. R. 3:22-10(b).<sup>1</sup>

Any arguments not addressed lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

---

<sup>1</sup> We note that defendant was sentenced on January 13, 2017. Well over three years later, on October 19, 2020, the Legislature amended N.J.S.A. 2C:44-1 to include youth as a mitigating factor. See N.J.S.A. 2C:44-1(b)(14). In State v. Bellamy, 468 N.J. Super. 29 (App. Div. 2021), we recently held that mitigating factor fourteen does not apply retroactively to criminal convictions that were not on direct appeal when the statute was enacted in 2020. Defendant does not argue that N.J.S.A. 2C:44-1(b)(14) should apply retroactively.